1158

SUPREME COURT OF THE UNITED STATES.

No. ~~233.~~ 112.

THE SCHOONER ANN CAROLINE, HER TACKLE, &c., JOHN SEDGWICK, LEONARD CHURCH, AND MARTHA BEASTON, CLAIMANTS AND APPELLANTS,

vs.

WILLIAM H. WELLS, LIBELLANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

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No. 233.

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1 UNITED STATES OF AMERICA,
Southern District of New York, ss:

[SEAL.] I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fifth day of December, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the said United States the eighty-seventh.

KENNETH G. WHITE, *Clerk.*

2 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Thursday, the sixth day of March, in the year of our Lord one thousand eight hundred and fifty-six.

Present: The Hon. Samuel R. Betts, district judge.

WILLIAM H. WELLS
vs.
THE SCHOONER ANN CAROLINE, her tackle, &c. } 11, 341.

FEB'Y 24, 1854.

The libellant files his libel in the words and figures following, to wit:

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel and complaint of William H. Wells, of Southold, Long Island, against the schooner Caroline, of Newark, New Jersey, her tackle, apparel, and furniture, in a cause of collision, alleges as follows:

First. That this is a cause founded upon collision, civil and
3 maritime, and the said schooner, Ann Caroline, is now, or is expected shortly to be, within the port of New York.

Second. That at the time hereinafter mentioned, the libellant was the sole owner of the schooner "John C. Wells."

Third. That the said schooner John C. Wells was, on the afternoon of Saturday, the 11th day of February, A. D. 1854, run into and sunk by the said schooner "Ann Caroline," and the libellant is entitled to the damages by him sustained in the premises, which amount to the sum of five thousand dollars, or thereabouts.

Fourth. That as to the facts of the said collision the libellant has no personal knowledge, but on his information and belief alleges that they were as follows, viz: That the schooner "John C. Wells" sailed from the port of New York on the 10th day of February, bound on

a voyage to Philadelphia, under the command of William Baker as master thereof, deeply laden with a valuable assorted cargo on board;

4 that at about half-past two o'clock in the afternoon of Saturday, the 11th day of February, she had arrived in Delaware bay, and was running about northeast up the eastern shore of the bay, close-hauled, and going about three knots an hour. That the schooner "Ann Caroline," which was a much larger vessel and was light, was also bound up the bay, and was at this time running in the same general direction, but further in-shore, and that the said "Ann Caroline," before she had beat out her tack, suddenly and unexpectedly went about, and running about six knots an hour directly towards the "John C. Wells," carelessly and negligently and wrongfully ran into the said "John C. Wells," striking her on her starboard quarter so soon and with such force, that she sunk in so short a period that her crew were barely able to escape with their lives.

That at the time, the schooner "John C. Wells" was a tight, staunch, and strong vessel, well fitted, tackled, and appareled, and had a proper lookout, and was heavily laden, and that nothing was done by her to cause the said collision, and nothing was omitted which could have been done by her, to avoid or to prevent the same;

5 but that the said collision was caused by the negligence of those on board and in charge of the "Ann Caroline," which was much more manageable, being light and easily steered, in coming about when they did; in running directly towards the said "John C. Wells," or otherwise giving her timely notice of the course intended to be pursued by said "Ann Caroline."

Fifth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellant prays that process, in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said schooner "Ann Caroline," her tackle, apparel, and other furniture, and that all persons having any interest therein may be cited to appear and answer, on oath, all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the damages as aforesaid, and that the said vessel may be condemned and sold to pay the same, and that the libellant may have such other and

6 further relief as in law he may be entitled to receive.

W. H. WELLS.

Sworn to before me this 21th day of February, 1854.

GEO. W. MORTON, *U. S. Com'r.*

BENEDICT, SCOVILLE & BENEDICT,
Proctors.

E. C. BENEDICT, *Advocate.*

Endorsed: 11,341. U. S. dist. court. William H. Wells *vs.* The schooner "Ann Caroline," her tackle, &c., Libel. Benedict, Scoville & Benedict, proctors. E. C. Benedict, advocate.

Filed Feb'y 24th, 1854.

7 District court of the United States for the southern district of New York.

Filed the 24th day of February, 1854.

Stipulation for libellant's costs entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and fifty-four, by William H. Wells, against the schooner Ann Caroline, her, tackle &c., for the reasons and causes in the said libel mentioned, and praying that the said schooner, her tackle, &c., may be condemned and sold to pay the demands of the libellants; and the said libellants and William E. Bird, surety, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or his surety, execution may issue against his goods, chattels, and lands, for the sum of hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or in case of appeal, by the appellate court.

W. H. WELLS.
WM. E. BIRD.

Taken and acknowledged this 24th day of February, 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William E. Bird, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

Sworn to this 24th day of February, 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded 24th day of Feb'y, 1854.

G. W. M., *Clerk.*

8 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the 24th day of

To be inserted after "John C. Wells," in fol. 5.

In not changing their course so as to avoid the John C. Wells, in having no proper look-out, and in not hailing said John C. Wells.

7 District court of the United States for the southern district of New York.

Filed the 24th day of February, 1854.

Stipulation for libellant's costs entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and fifty-four, by William H. Wells, against the schooner Ann Caroline, her, tackle &c., for the reasons and causes in the said libel mentioned, and praying that the said schooner, her tackle, &c., may be condemned and sold to pay the demands of the libellants; and the said libellants and William E. Bird, surety, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or his surety, execution may issue against his goods, chattels, and lands, for the sum of hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or in case of appeal, by the appellate court.

W. H. WELLS.
WM. E. BIRD.

Taken and acknowledged this 24th day of February, 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William E. Bird, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

Sworn to this 24th day of February, 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded 24th day of Feb'y, 1854.

G. W. M., *Clerk.*

8 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the 24th day of

February, in the year of our Lord one thousand eight hundred and fifty-four, by William H Wells, against the schooner Ann Caroline, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said schooner or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had that the said schooner or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded, as we have often before commanded you, to attach the said schooner or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 29th day of August next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this 10th day of August, in the year of our Lord one thousand eight hundred and fifty-four, and of our independence the seventy-ninth.

GEO. W. MORTON, *Clerk.*

BENEDICT, SCOVILLE & BENEDICT,
Proctor for Libellant.

9 In obedience to the within monition, I attached the schooner Ann Caroline therein described, on the 19 day of August, 1854, and have not given due notice to all persons claiming the same, that this court will, on the 29 day of August inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

ABR'M T. HILLYER,
U. S. Marshal.

Dated Aug. 29, 1854.

Filed Aug. 29, 1854.

I hereby depute Peter Miller to execute the within process.
Dated 10 Aug., 1854.

ABR'M T. HILLYER,
U. S. Marshal.

WILLIAM H. WELLS,
vs.
THE SCHR. ANN CAROLINE, &c.

We consent that the above vessel be discharged on Stipulations for costs and value, the latter in $5,000, to be signed by Daniel C. Higgins and Elzey S. Powell as Sureties. The Sureties to justify before the Commissioner and the Claimants paying into Court the costs of the officers of Court. New Stipulators to be substituted, if we desire it.

BENEDICT, SCOVILLE, & BENEDICT.

August 21*st*, 1854. *Prs. for Lbl'ts.*

DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK. IN ADMIRALTY. FILED THE 21ST DAY OF AUGUST, 1854.

Stipulation entered into pursuant to the rules and practice of this Court.

Whereas a Libel was filed on the 24th day of February, in the year of our Lord one thousand eight hundred and fifty-four, by William H. Wells, Libellant, against the Schooner Ann Caroline, her tackle, &c, for the reasons and causes in the said Libel mentioned; and whereas the said Schooner, her tackle, &c., in the custody of the Marshal, under the process issued in pursuance of the prayer of said Libel, and by a consent signed by the Proctors for the Libellant, it has been agreed to discharge the said vessel from custody on Stipulations, for costs and value, the latter in $5,000, as appears from said consent now on file in said Court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the Claimants or their sureties, execution for the above amount may issue against their goods, chattels and lands:

NOW, THEREFORE, the condition of this Stipulation is such, that if the *Stipulators* undersigned, shall at any time, upon the Interlocutory or final Order or Decree of the said District Court, or of any Appellate Court to which the above named suit may proceed, and upon notice of such Order or Decree, to Owen Betts and Vose, *Esquires*, *Proctors* for the *Claimants* of said vessel, abide by and pay the money awarded by the final Decree rendered by the Court or the Appellate Court if any appeal intervene, then this Stipulation to be void, otherwise to remain in full force and virtue.

Taken and Acknowledged, this 21*st day of August*, 1854, *before me*, } D. C. HIGGINS. EL. S. POWELL.

GEO. W. MORTON, *U. S. Commissioner.*

Southern District of New York, ss.—

DANIEL C. HIGGINS AND ELZEY S. POWELL, *parties* to the above Stipulation, being duly *sworn*, *depose* and *say*, and each for himself saith, that he is worth the sum of ten thousand dollars, over and above all his just debts and liabilities.

Sworn to, this 21*st day of August*, 1854, *before me*, } D. C. HIGGINS. EL. S. POWELL.

GEO. W. MORTON, *U. S. Commissioner.*

Recorded the 21st day of August, 1854.

G. W. M., *Clerk.*

At a stated term of the district court of the United States of America, held at the City Hall, in the city of New York, on Wednesday, the 30th day August, A. D. 1854.

Present: The honorable Samuel R. Betts and Charles A. Ingersoll, district judges.

WILLIAM H. WELLS
vs.
THE SCHOONER ANN CAROLINE, her tackle, &c. } 11, 341.

The marshal returns on the pluries monition issued in this cause—the vessel attached and no notice given.

Messrs. Owen and Betts appeared on behalf of the claimants; and, on their motion, it is ordered that the claimants here have ten days to file and perfect their answer.

11 To the honorable Samuel R. Betts, judge of the district court for the southern district of New York:

The answer of Smith Wilden, John Sedgwick, Leonard Church, and Martha Benston, owners of the schooner Ann Caroline, her tackle, apparel, and furniture, intervening for their interest therein, to the libel and complaint of William H. Wells, alleges as follows:

First. That these claimants are the sole owners of the schooner Ann Caroline, her tackle, apparel, and furniture.

Second. That these claimants have no knowledge as to the matters contained in the second article of said libel, or sufficient information thereof to form any belief as to the same, and they therefore leave the libellant to make such proof thereof as he may deem material.

Third. That these claimants deny the matters contained in the third article of said libel, and they aver to the contrary thereof, that the damage sustained by the schooner John C. Wells, upon the occasion in said article referred to, was caused by her wrong-
12 fully running into and upon the schooner Ann Caroline, and that said schooner J. C. Wells was then insufficiently manned, which also contributed to said collision.

Fourth. That the facts of the collision referred to in said libel are as follows: That the schooner Ann Caroline, being well and sufficiently appareled, equipped, and manned, was proceeding on a voyage from New York to Smyrna, in the State of Delaware, and while beating up Cape May channel into the Delaware bay, at about 3 o'clock in the afternoon of the 11th of February, the wind being ahead and a number of other vessels in company, a certain schooner, the name whereof is unknown to these claimants, which was a short distance ahead of the Ann Caroline, suddenly tacked, and thereby rendered it necessary for the Ann Caroline to tack also, which was accordingly done, and the "Ann Caroline" stood off shore on her starboard tack; that before she gathered headway, and within a very short time after said tack, the schooner John C. Wells, which had been behind the Ann Caroline, neglecting or wrongfully omitting to change her tack, or to give way for the "Ann Caroline," and

13 having her larboard tack on board, ran into the Ann Caroline, carrying away her flying jib-boom and springing her bowsprit, and doing her other damage, and by the force of such collision sinking herself.

Fifth. That the Ann Caroline tacked, as aforesaid, at a proper and usual place, and in a proper manner, and had full right thus to do; and that the John C. Wells had the whole width of the bay wherein to have tacked, and that she could have tacked or given way without difficulty, and thus have avoided the collision, and that it was her duty so to have done.

Sixth. That all of the crew of the Ann Caroline were upon deck, (except one who was temporarily below,) and were engaged in the care and management of the vessel, and that a proper and sufficient lookout was kept or stationed on board, but that no lookout was kept or stationed on board the John C. Wells, and only one man was on her deck, and that he was at her helm.

Seventh. That, in all respects, the "Ann Caroline" was
14 properly and skilfully navigated, and that said collision happened without any fault, negligence, or misconduct on the part of the Ann Caroline or of those in charge of her; but that the same happened solely through the fault, negligence, and misconduct of those in charge of the John C. Wells.

Eighth. That the whole value of the Ann Caroline at the time of said collision was $7,000; that she was then in ballast; and the claimants deny that the damage sustained by the libellants amount to the sum of $5,000, as is untruly alleged in said libel.

Ninth. That all and singular the premises are true, and that all the matters contained in said libel not hereinbefore admitted or confessed are untrue.

Wherefore these claimants pray that the said libel may be dismissed with costs in favor of these claimants, and that such other order or decree may be made by this honorable court as may be just in the premises.

SMITH WILDEN.

Sworn before me this 5th day of Dec., 1854.
CHA'S ELLIOT SCOVILLE, *U. S. Comm'r.*

Endorsed, &c.: Answer filed Dec. 6, 1854.

15 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Wednesday, the 23 day of May, in the year of our Lord one thousand eight hundred and fifty five.

Present: The honorable Cha's A. Ingersoll, district judge.

THE SCHOONER ANN CAROLINE, her tackle, &c., *ads.* WILLIAM H. WELLS.

This case having been heard on a motion that Smith Wilden, one of the claimants, be permitted to withdraw his intervention, and

that his name be stricken out of the pleadings and proceedings, and having been argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered by the court that the name of the said Smith Wilden be stricken from the record and proceedings in this cause. This order not to affect the stipulations already given in the cause.

(Signed) CHA'S A. INGERSOLL.

16 Filed the 23 day of May, 1855.

17 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the fourth day of October, in the year of our Lord one thousand eight hundred and fifty-five.

Present: The honorable Cha's A. Ingersoll, district judge.

WILLIAM H. WELLS
vs.
THE SCHOONER ANN CAROLINE, her tackle, &c. } 11, 341.

This case having been heard on a motion that Smith Wilden's name be struck out of the stipulations on file, upon new stipulations for costs and value being entered into and filed by the claimants, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the claimants have leave to file in the place of the former stipulations for costs and value in this cause, the latter in the sum of five thousand dollars, the same to be executed by Daniel C. Higgins, and Elsey and Powell as sureties, and some other claimant in the place of Smith Wilden, whose name, however, is not to be stricken from the former stipulation; the said parties to justify before the commissioner on due notice to the libellants, and the costs of this motion and of the new stipulations to be paid by the respondents; and it is further ordered, that when the terms of this order have been fully complied with, the former stipulations be cancelled.

(Signed) CHA'S A. INGERSOLL.

18 Filed the 4th day of October, 1855.

19 *Respondent's costs.*

District court of the United States for the southern district of New York.

Filed the eighth day of October, 1855.

Stipulations entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the 24th day of February, in the year of our Lord one thousand eight hundred and fifty-four, by W. H. Wells, against the schooner Ann Caroline, her tackle, &c.,

for the reasons and causes in the said libel mentioned, and praying that process *in rem* might issue against said schooner, and a stipulation for costs having been given, and by the order of court the name of Smith Wilden is stricken from said stipulation, and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands:

And whereas, also, a claim is about to be filed in said cause by John Sedgwick:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal by the appellate court.

JOHN SEDGWICK.
D. C. HIGGINS.
E. S. POWELL.

Taken and acknowledged this eighth day of October, 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

Oct. 13.
E. S. POWELL.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John Sedgwick, Daniel C. Higgins, and Elsey S. Powell, parties to the above stipulation, being duly sworn, doth depose and say that they reside in New York, and each for himself saith that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JOHN SEDGWICK.
D. C. HIGGINS.
E. S. POWELL.

Sworn to this eighth day of October, 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

Oct. 13.
E. S. POWELL.

Recorded the 8th day of Oct., 1855.

G. F. B., *Clerk.*

20 District court of the United States for the southern district of New York.—In admiralty.

Filed the 8th day of October, 1855.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed on the 24th day of February, in the year of our Lord one thousand eight hundred and fifty-four, by Wil-

liam H. Wells, libellant, against the schooner Ann Caroline, her tackle, &c., for the reasons and causes in the said libel mentioned; and whereas the schooner, her tackle, &c., has been in the custody of the marshal, under the process issued in pursuance of the prayer of said libel, and a stipulation for value executed by Smith Wilden and others, and by an order of court the name of John Sedgwick is to be substituted in place of Smith Wilden for $5,000, as appears from said order now on file in said court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants or their sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Owen & Vose, esquires, proctor for the claimant of said schooner, abide by and pay the money awarded by the final decree rendered by the court, or the appellate court if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

JOHN SEDGWICK.
D. C. HIGGINS.
E. S. POWELL.

Taken and acknowledged this 8 day of October, 1855, before me.
GEO. W. MORTON,
U. S. Commissioner.

13 Oct. G. W. M.
E. S. POWELL.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John Sedgwick, Daniel C. Higgins, and Elsy F. Powell, part to the above stipulation, being duly sworn, depose and say that they reside in New York, and each for himself saith that he is worth the sum of ten thousand dollars over and above all his just debts and liabilities.

JOHN SEDGWICK.
D. C. HIGGINS.
E. S. POWELL.

Sworn to this 8 day of October, 1855, before me.
GEO. W. MORTON,
U. S. Commissioner.

13 Oct. G. W. M.
E. S. POWELL.

Recorded the 8 day Oct., 1855.

G. F. B., *Clerk.*

21 U. S. district court.

WILLIAM H. WELLS *vs.* THE SCHOONER ANN CAROLINE, her tackle, &c., JOHN SEDGWICK and o'rs, claimants.

Benedict, Scoville & Benedict, pr. for lib't.

Owen & Vose, pr. for cl'm'ts.

WEDNESDAY, *Oct.* 17, 1855.

This cause being called in its order on the calendar, ordered hearing. Pleadings read.

EVIDENCE FOR THE LIBELLANT.

Deposition of Somers Hand. (*See p.* .)

Wind NW. or NNW.; Wells on larboard tack; booms off starboard; Caroline to leeward of Wells; changed to starboard tack; struck Wells midships.

Deposition of Richard D. Hickman. (*See p.* .)

John W. Oliver, (sworn.) Mariner; sailed as master and mate, 17 y'rs at sea; then mate of Deputy; saw this collision; was steering the schooner "James H. Deputy," rather astern and leeward of Wells 20 or 30 yards; running N. by E., pretty much in the direction of Crow shoals, and Wells on about same course; both vessels close hauled;
22 his board touched sand before tacking; that is, as he got in stays at buoy; 5 knot breeze, 2 to 3 p. m. Caroline crossed his bows not 20 y'ds off; all witness could do was to clear her; Caroline then heading W. by S.; should judge running full 5 knots or more; had full sail on, and struck Wells abaft main chains, 6 to 8 feet in her cabin. It was a very hard blow. Wells began sinking directly. Saw 5 men on Caroline before she struck; she could with all ease have gone under stern of Wells; latter was dead to windward, as far as she dare go; could not avoid Caroline by putting her helm up; would then have run into Caroline; nor could Wells go off the other course without running on to the shoal. Had made several tacks in company with Caroline; was obliged to keep away from her three times; she would not give any; did not consider she was well managed; her management at time was subject of conversation between witness and master of "Deputy." There was room for "Caroline" to go astern of "Wells" and ahead of "Deputy." Wells went down within three minutes after collision.

Cross-examined.

Had been lying to outside of Cape May, about one p. m., with
23 probably 20 vessels, including Wells and Caroline; all the vessels going up tacked at buoy; but, except Deputy and Wells, the others were over on Jersey side, (including Caroline,) and she was then round on her starboard tack, going towards Crow shoals, and 3 or 400 yards off from witness, and thinks both

vessels about same distance up the bay; Wells went on her larboard tack about ten minutes before the collision. Deputy was about her length from Caroline at time of collision, and about 100 y'ds to leeward of Wells; Caroline was 5 points on the wind at time of collision; Wells and Deputy also 5 points off; Wells appeared to be of about 160 tons burthen. It was first of flood tide, perhaps 1½ hour; at low water about 6 feet on shoals, sometimes 5 at rather low water; thinks not over 7 feet at time of collision; end of shoals about 1½ miles from Cape May, and run north and south; thinks there was not water enough on shoals to admit Wells to go over them; she had shoaled her water on edge of shoals before going about. There was not room for Wells to go about at time of collision. Judges the channel about a mile wide at place of collision; been once pilot up the bay there.

Re-direct.

Wells obliged to tack at buoy to avoid going ashore. Saw
24 other vessels quite up the bay; no one near enough to interfere with Wells or Caroline.

Re-cross.

Some sea on; not heavy; saw no vessel mis-stay; in light sea, light vessels work best, and loaded, in heavy sea.

Stands over for witnesses absent. Resumed and continued Dec. 20, 1855.

THURSDAY, *December* 20.

EVIDENCE FOR LIBELLANT.

Richard Squires, (sworn.) Chief mate of sch'r Wells. Got under way about 2 o'clock; wind NW.; tacked on shore; 5-knot breeze; 1st of flood tide; held tack as long as serviceable; then tacked off towards the buoy, and ran very near to it, as near as dare go; nothing ahead in his way on that tack. The Jersey shore gave the long stretch; was hauled close to wind, on that tack; run up as near to shoals as wind would allow; was loaded deep; could not go over the shoal; no vessel ahead on that tack; saw a number of vessels astern, and to leeward on his quarter; some only a short distance astern; were all
sch'rs. The A. C. was one; rather on his lee-quarter when
25 witness saw her; from 60 to 100 yards more in-shore, on same tack; witness was on the lookout; Capt. Baker at wheel; 5 men on board, including one boy; that made a full crew. Did not see the A. C. when she tacked, but saw her round on starboard tack, coming head on to the west, probably 40 y'ds off, coming under 4 or 5-knot breeze, and pretty quick. She struck A. C. on the starboard side, near cabin, about ten feet from taffrail, with a very heavy blow; blow a little angling. The J. C. W. was sunk by blow; she could not get out of the way; if he had put up his helm he should run into her; if put it down the A. C. would have run into his stern. Thinks he was not over 40 or 50 yards from the shoal at the buoy; as he

was coming round on this tack, he riled the water. Thinks the A. C. would easily have cleared him by putting up her wheel a little; W. was to windward; both vessels close hauled. When he first discovered A. C. on this tack, she could have cleared him by putting her helm down, or if, when 50 yards off, by going into stays. Witness was so stationed as to see everything ahead; all was clear for them there. A. C. was lightest and running fastest of the two; she was overhauling him (on same tack.)

Cross-examined.

26 Thinks the two vessels tacked very nearly at same time at buoy; cannot say which was about first; W. was rather nearest the buoy, and most westward at time of tacking. When running on that tack, towards Jersey shore, saw nothing within 2 miles ahead. Ten or twelve schooners astern and to leeward that morning; no one ahead of him. Had not been on the last tack over 3 or 4 minutes at time of collision; was heading NE. or N.NE.; he tacked right by the buoy, without being near enough to touch it. Supposes had run $\frac{1}{8}$ of a mile on the tack when struck; had not got up opposite steamboat wharf; does not know width of channel there. It was cold weather; water froze on deck. Witness and one other took boat and got to A. C.; some climb over chains into her; saved nothing; lost all his things; his overcoat was below; had been about an hour on lookout; no over-clothes on; did not go below after tacking last.

A. C. 6 or 8 feet highest out of water; saw no persons on her deck when she was approaching; does not think he could have seen a man on larboard side of A. C. after latter made her last tack, nor on starboard side; could see to fore-rigging. Witness was on star-
27 board side and about middle of his vessel; a little forward of and to windward of foremast, he thinks. Don't recollect paying any attention to A. C., from time of first seeing her on larboard tack till he discovered her approaching on the starboard tack; knows of no vessels to windward of him. Heard captain sing out, when discovered, A. C.; don't remember witness sung out. At last captain shoved his wheel down; that was after he sung out and just as she was struck; did not bring her into the wind; was not time for that; can't say she came up at all; when first saw A. C. on her starboard tack, thought there was danger from her; W. was running about 4 knots; had as much sail on as thought prudent, 4 or 5 knot, for large vessel; W. was about 100 tons. Been engaged in sea service, off and on, 7 or 8 years; had been on W. a year before and had now joined her about one month.

Re-direct.

Thinks capt. hallooed to A. C. to go about, as loud as he could. Don't know where steward and boy are; has not seen them since they left capt.

William H. Baker, (sworn.) Was master of Wells; at helm;
28 after getting under way, at Cape island, abreast Taverns,

went off S. and W. on long tack; wind N. and W.; came round N. NE.; standing towards Jersey shore, holding about 1½ mile on that tack, then went round to Crow shoal, westward; short leg; ran up till stirred mud; then came about; drew 10 feet; was deeply loaded; decks about an inch from water; deck load of molasses. First saw A. C. at Cape May; next he took notice of her was after tack at Crow shoals, (buoy;) A. C. was on same tack, coming on same tack 100 rods to leeward; about abreast of him at leeward; his vessel then running scarcely a mile an hour, just sagging off the shoal and not got her headway; A. C. was going about 5 knots; was light; both vessels close hauled; witness kept observation under lee; looked out under boom as much as he could and steer; saw her just as she got about; did not see her make the tack; ⅔ of her tack only run out when she came about; witness saw nothing to prevent her beating out her tack then or afterwards; all the vessels in sight appeared to be standing their tacks out; could see ahead and all around; A. C. was then short of a ¼ of a mile from him, coming right towards him at rate of 4 or
29 5 knots; witness hallooed to her as loud as he could halloo; she had time to go about or keep off; hailed her to go about; she paid no attention to the hail; did not alter her course; struck W. on her quarter, abreast of cabin, 10 or 15 feet forward of taffrail; knocked broad hole into stern, and jolted kegs of molasses on deck upon their heads; A. C. came straight on to W.; witness saw both sides of her bow; hung on awhile, then dropped off astern. Witness ordered his men to get into the boat as quick as they could; she went down within 2 or 3 minutes; witness stayed on deck till water came over his knees; then he and two men crawled up the fore chains of A. C., and W. went directly down. Blow cut into cabin-house and down into body of W. Thinks A. C. was empty; 5 or 6 feet higher out of water than W. She could not get out of her way; there was not room to go about, without going ashore; could not keep out of way of A. C. in any way. Thinks not over 9 feet water on shoal; about 1 hour's flood. There is a vessel now wrecked on the shoal, which drew 9 feet of water. A. C. could easily clear the W. had she seen her; moving one spoke of her wheel would do it;
30 could have gone under her stern with all ease; could have gone over the shoals, as she was light; saw no lookout on A. C. Thinks collision was about 50 rods from buoy; buoy is on east edge of shoal; the edge runs north and south. Never seen steward and boy since; heard of them before A. C. was arrested, not since.

Cross-examined.

Did not see A. C. tack at buoy; had not noticed her particularly before reaching buoy; did not know her when she was standing to west; but after that saw her on same tack NE., and noticed her as she ran along under his lee, running same direction with W. She must have taken that tack before he did, as she was off his quarter a little astern, going off him very fast. Buoy bore very near west of him when he tacked. W. was at bottom, after blow, within 3 min-

utes. Had seen her on larboard tack a minute or two before: saw her on starboard tack; saw both sides of bow; saw larboard side of her sails; does not think he could have seen a vessel on larboard side of his sails. Thinks she had lessened her distance one-half when he sung out; when he sung out, put his wheel hard down—say 20 rods off; it did not bring his vessel into the wind; nor can he
31 tell how many points she came up. Witness ran forward as soon as he put his wheel down, to save his life. Nothing except Crow shoal to prevent his going about. When he first saw the A. C.; putting wheel down would bring his vessel about. When he first saw bow of A. C. she was pointing to about his midships; his vessel 120 tons; not with centre board.

FRIDAY, *Dec. 21st.—Continued.*

Re-direct.

Witness produces his diagram of *locus in quo*. Saw Ann Caroline down at Squam beach the day before; read her name as she passed the Wells; W. got under way first the morning of collision; it is certain it was A. C. he saw under his boom; he was as close to the wind as he could be when he tacked from buoy. Witness has sounded over the shoals; in that way knows depth of water; a vessel drawing 9 feet cannot go over them; water 9 feet at high water; sounded both at low and high; 7 feet at low water.

Re-cross.

Sounded near where vessel lies aground; got under way west end of Taverns. Thinks not more than 6 to 12 inches from high and low water where he sounded. Shipped steward in N. Y.; don't recollect his name; boy's name, Henry; they were one month on board W.

32 Charles A. Bloomer, (sworn.) Was before the mast on Wells; on deck at time of tack at buoy, and at collision; 4 on deck at tack; capt., mate, and another man before mast; same on deck at collision; and also steward boy, 16 or 18 y'rs old, one of the 5.

Witness went below after tack and before collision, for his coat. Saw A. C. directly after tacking; on same course as W.; on his lee quarter, a little astern; no vessels near them ahead; not nearer than 1½ or 2 miles; wind NW.; sch'r close hauled; A. C. was coming right for W., head on, when he came up from below; she must have tacked to put her in that position; did not see her tack, and is not acquainted with channel enough to know how far it went on E.; she cut into cabin; very heavy blow; 10 to 12 ft. from taffrail. Heard some one speak loud before he came out of cabin; that started him out; did not understand who was speaking or what was said; A. C., he thinks, was 100 to 150 y'ds off when he came up, and if she had put her helm up she would have gone under stern of W.; latter could not have gone under her stern by putting helm up; W. was farthest to

windward; A. C. was going fastest; thinks she was going 4 or
33 5 knots; W. deeply loaded; A. C. was light, a good deal highest out of water; does not think there was room between W. and shoal to go about. Did not see A. C. tack at any time; Capt. Baker had wheel from time W. got under way; steers with tiller; wit. never said he had the helm; should think A. C. was ½ half a mile to leeward of W. when the two were on the same tack; W. was bound to Philadelphia; capt. of A. C. told them where he was going; said he was not bound to Philadelphia, and said we had better go ashore at Cape, and did so.

Cross-examined.

Followed sea about 12 y'rs; been 6 months in W.; know nothing of that shoal; not visible above water; had been once before at that place; was tending jib and looking out at time of tacking; on North river his tack towards Jersey shore would be called starboard tack; does not know phrase at sea; went below with another man to put on overcoat; mate did not go below. It was cold; had a fire below; put on his coat and mittens. The loud speaking brought him on deck. The other man and steward followed him up; when A. C. was coming towards W. he just saw bluff of her bows; W. could have gone about except for closeness of shoals. Thinks on close hauled tack W. lay closest to wind; saw no other vessel
34 within 2 or 300 yd's of them; did not see any other vessel than A. C. when he came up on deck; thinks tiller was shoved clear down then; W. very sharp and works slow; A. C. not so sharp; flat bottom and greatly larger than W.

Re-direct.

Did not see any person on bow of A. C. Thinks he should have seen any person there, or so placed that he could see W.; wit. and mate got on board A. C. in boat; cut it loose, and drifted down to A. C.; W. sunk very quick; had no time to get his clothes.

Re-cross.

Should not have seen a man at foremast of the A. C.; he could see sails and mast of W. at that station, but not her hull.

Re-direct.

Never seen steward and boy since; believes steward is in N. Y., and boy on Long Island.

John C. Little, (affirmed.) Lives on Bay Shore, Delaware; knows where Wells was sunk; it was a mile SE. from his house, in sight, and directly in front of his house; been often at place of wreck, and helped cut off the sails at low water next morning; mainsail was torn in pieces; foresail sound and good; after-shroud was cut away; most of mast was above water; could not see the deck; knows well where

shoals are; has seen vessels of light draugh passing them; ves-
35 sels of deep draugh cannot pass shoals; seen vessels aground on shoals; one there now; went on two months.

Re-cross.

Saw her go ashore.

Re-direct.

Wreck next morning was about 100 yd's from buoy; hardly ¼ of a mile from shoal; not over 4 to 500 yd's; her head lay very nearly NE.

DEFENCE.

Frazier Cranmer, (sworn.) Lives in Jersey; been in Delaware bay; was employed to work on wreck of Wells by A. G. Benson, last summer; went in sch'r Rio Grande, commanded by his father, John Cranmer; worked there about 6 months; did not raise her; had to work at slack-water; she lay about a mile below steamboat landing, (Cape May;) landing bore NE. by N. from wreck; sounded round her; at high water, 5 or 6 fathoms; ordinary time 5 to 6 feet there; channel there not over ¾ of a mile wide; lay about ½ a mile from Jersey shore; she lay from ¼ to ⅜ of a mile from Crow shoal; saw vessels going each side of W. where she lay; saw vessels carrying 2 or 300 tons, square-rigged, go inside of her, according to wind. With wind
NW., wreck lay right in their track; they stretched to west and
36 east of her; has seen vessels tack to west of her; saw a loaded brig go about to west of her; wind southward; no difficulty in vessel going about to westward from place where W. is sunk; not for a fore-and-aft vessel; NW. wind on, one hour's flood tide makes a bad sea there. His schooner drew 7 feet in ballast; been across upper end of shoals in half tide, and about where W. is sunk, in another vessel drawing 7 feet loaded, about ½ tide.

Cross-examined.

He lives 12 miles from beach, at Cape May; been at sea about 10 y'rs coasting to Mobile, Gulf of Mexico. Thinks it was eight or 9 months after W. was wrecked that he went there to work; 2 y'rs next May. W. lay about ¼ of a mile E.NE. from buoy; landing bore NW. by N.; 20 feet water over deck of wreck; bottom is hard all round; pretty much sand, with some clay; never directly at buoy; thinks it is off edge of shoal, in first of deep water. Did not qui' working there till ice came down. Thinks he saw vessels go ¼ of a mile west of wreck; loaded brig did not go more than 100 y'ds W of wreck; bore SW. from wreck; wind southerly; she was bound out

Robert Scarborough, (sworn.) Been 10 y'rs at sea, coastin;
37 and W. I. trade. Was mate of Ann Caroline at collision Then been about a month with her; been about 2 y'rs befor in employ of owners. Had six men on board—master, mate, 3 men

and steward—a full complement for schooner of that size. Got under way under Cape island about 1 p. m., bound to Duck creek, Smyrna, up the bay; wind NW. all day, a good breeze—a full sail breeze; sch'r in ballast; 25 to 30 vessels got under way about same time, all beating up Cape May channel. He was about midway in the fleet, some ahead, some astern; he tacked within 50 y'ds or less of the buoy; then headed N. by E. ½ E., towards Jersey shore; held that tack pretty well over to that shore; had to go about for another vessel, which was ahead of him, a little to leeward. She came in stays and came about; and A. C. had to go about, because there was a vessel to leeward of the one which went about, and he could not accordingly go under her stern and across the bows of the other. The capt. ordered A. C. to go about; all hands on deck; capt. at the wheel; Paul Peterson on lookout; heard he had left for Australia or California; not seen him since the sch. came to N. Y. in March after.

38 Had just got in stays; had not trimmed down his flying-jib, (stood by it himself;) when the Wells was reported by captain, then witness saw her. She was then on his lee bow coming up, all sail set, running 5 or 6 knots, and hardly 50 yds. off; heading about N. by E. ½ E.; capt. ordered to hail that vessel and tell to go about; witness hailed her 4 or 5 times, as loud as he could halloa; she was near enough to hear the hail had anybody been on deck; saw one man at her wheel; could see any other one if on deck; could not help it, as he was looking right down on the deck. Witness ordered his wheel put hard down to bring his schooner into the wind and go about; it would have done so if sch'r had any headway; but she had no steerage way on her; does not think she came up a ½ a point. Flying jib-boom of A. C. took fore rigging of W., and then the fore-sail, and then two vessels came right together; headway of W. was in that way broken, and A. C. was swung clear round on the other tack; collision sprung his bowsprit, carried away flying-jib, and damaged cutwater. There was plenty of room there for A. C. to go about; it was about ½ a mile from the shoal.

39 The A. C. was on starboard tack at time of collision; both vessels close-hauled to the wind; capt. and boys of W. came on board in larboard forechains of A. C. Witness helped them come on board; mate and one man came in boat; saw men coming out of cabin, after hail and about the time A C. took the fore-rigging of W.; the mate was in his shirt-sleeves; saw mate and captain both come out of cabin; is sure of that; other men had overcoats; can't say as to mittens; saw a man at wheel of W.; don't know his name; was examined to-day as a witness. The day was cold; water froze coming on deck; a good deal of sea on, and spray upon deck, which froze. He must be a hardy man to stand an hour on deck in his shirt-sleeves. Asked the man who came on board if he was at wheel; he said, yes, but was scared so bad he did not know what to do when witness sung out; he said he heard the hail; also talked with captain when he came aboard; asked him why he did not go about; he answered he did not see A. C. at all; he said he saved his gold watch, as he came out of the cabin; (points out the capt.)

Cross-examined.

Joined the A. C. in N. York, and ran down to Cape island; thence to Duck creek, Smyrna; thence to New York; remained with her till discharged and loaded again—about two months. Been often over the ground and in sight of the buoy. Had been 2 mate and chief mate about 4 y'rs at that time. Cannot say how many tacks
40 he made from Tavern house to buoy; may have been a dozen; first stretch was N. and E.; cannot say how long he was going to buoy. The next tack was off seawards, W. by S.; I can't judge the distance or time of that tack; could have held that course to the other cape, 12 miles or more; were below any other shoal. Did not know W. at all, till capt. of her came on board and told her name. Next stretch, N. and E., towards Jersey shore, could not be very long, but can give no idea how far he ran. The next tack, W. and S., towards shoals; can't state how far he held on that. Will not undertake to enumerate the tacks he made before he got to buoy. Suppose it 4 miles by land from Cape island to steamboat dock. The collision took place about 4 p. m. Saw the buoy when he tacked. Did not notice any vessel ahead of them near there. Did not see W. till he came about and she was near him; she was deep loaded. He was anchored about 3 miles outside of Tavern houses; some vessels outside and some inside of him, about abreast of Cape island. She came about E. of the buoy—nearly abreast of it. Saw vessels within 200 y'ds to leeward, to N. & E. of him; might have been others NW., but did not notice them. Those NE.
41 of him were nearer the steamboat dock than he; did not then notice how steamboat dock bore from him; saw vessels there all around him; some less than $\frac{1}{4}$ of a mile off. There was a vessel west of him when he tacked at buoy; saw several north, some 200 yards, and from that to a mile or more; also saw some to east and NE., but did not count them, and cannot tell how many. One vessel made him tack when more than $\frac{2}{3}$ of the channel over towards Jersey shore; soon after tacking, then saw two vessels, one N. and E. of him, and one abreast of him, both to leeward. The one ahead came clear about, not over 200 y'ds ahead, on her starboard tack and held it, and the other below held her tack, and that prevented A. C. holding her course. Did not take A. C. over three minutes to come about; she had two men forward; Paul Peterson was put on lookout by witness; he stood forward by windlass, on the starboard, at collision; saw him forward, but cannot tell whether he was stationary there. Witness was in wake of forechains forward, when he hailed W. to go about. One man aft with Captain Cook in
42 cabin; captain took the wheel when first got under way, and kept the wheel to the collision, so far as he knows; did not see any other person take it. Witness did not go below after got under way; had a little work fitting a runner to anchor pump; was at that duty when W. was hailed from wheel. Peterson was to windward—all the time forward; was not at wheel; saw capt., mate, and two men

come out of cabin of W.; heard no hail from her. Last he saw other man of his vessel, he was tending center-board. Cassidy just came on deck from aloft, just at collision; came down forward. Capt. of W. said to his own crew, as they came forward, that he saved his gold watch as he came out of his cabin.

It was impossible in any way to clear W. by any change of her helm. If she had gone off ½ point, 150 yards off would not help to clear W., unless W. had come up in wind.

Jacob S. Smallwood, (sworn.) 8 or 9 y'rs at sea; lives at Great Egg Harbor; worked on wreck of W., June, 1854, in sch'r Teazer; was 6 months at wreck; wreck lay a mile from the steamboat landing; bore about SW.; sounded round her; 6 fathoms water—high water; she was from ⅜ to ½ a mile from Crow shoals; some vessels on
43 NW. wind went up west of wreck; she lay just about in track of vessels beating in; they usually made stretch to buoy, and then went about; vessels of 250 to 300 tons went inside of wreck; sch'r Julia, of 250 tons, drawing 9 feet at 1½ hours flood, sch'r B. & F. drawing 10½ feet; knows the vessels and their draughts. There was room enough for W. to have gone about and stand over towards the shoals, and could have held that course ⅜ to ½ a mile.

Dec. 21.—The proofs unfinished to be continued next term. Ordered to take precedence on the calendar on first day of next term.

1856.—WEDNESDAY, *January 2d.*—Continued

Evidence of claimants.

Livingston Smith, (sworn.) Resides at Cape May, N. J.; been 14 y'rs accustomed to navigate Delaware bay; was in the channel day of collision in command of sch'r John Tows; left New York night before; reached Tavern houses between 12 & 1 p. m., and saw several schooners there under way, or just getting under way; saw the two schooners in question there; wind NW.; witness came
44 up to Cape under double reef; after passing houses, shook out reefs and went up channel under full sail; was about ¾ of a mile ahead of Ann Caroline; did not see the vessels make the collision; saw them together and before W. sunk; witness was standing towards Jersey shore; tacked at shore ¾ of a mile from sch'r; did not come nearer to her; was to leeward of two vessels when they were together; thinks A. C. went from ½ to ⅔ of the way across channel towards Crow shoals; there was plenty of room between her position and Crow shoals for her to tack; witness has tacked there; has been twice to westward of her as she lies; with centre-board, when that is down, draws about 16 ft. water; had plenty of room; his schooner was 136 tons register.

Cross-examined.

Came inside Eph. shoals, opposite Tavern house; W. was then getting under way outside of witness. Knew A. C. and her master; saw

name of W. on her stern; witness tacked off S. and W; went ½ way to light-house, and then tacked N. and E.; made 2 or 3 tacks before getting up to light-house; was under ballast; from light-house headed off W. by S.; then stretched towards Jersey shore, above light-
45 house; went not ½ way to steamboat dock; was a short distance above steamboat deck when he saw collision, and was nearly in mid-channel; did not notice bearing of dock or two sch'rs from him; was then first of flood; were breakers on the shoal and rough down there; kept 200 y'ds or more off there; might have gone nearer; two sch'rs were west of him at time of collision; thinks collision was below lower point of Crow shoals; passed wreck to westward whilst vessels were at work raising her, coming from Philadelphia loaded; wreck 100 y'ds to west of her; tide about ⅓ ebb; did not pass nearer the wreck; tacked past her on southwest wind, across her bows and pretty much round her. Know Capt. Wilden 7 years; came here from Cape May, at request.

Re-direct.

Thinks there were 15 or 20 sail in the fleet. From his vessel Wells appeared to have sunk below point of shoals; when he afterwards passed her, found the wreck did not lie as far down as he supposed the collision to be.

Re-cross.

3 or 4 of fleet up above nearer him; rest were below, and appeared to him to be pretty much together; saw some both sides of
46 collision.

Alexander P. Waithman, (sworn.) Was master of sch'r John Harris at time of collision; was at anchor by Taverns; lay over night and got under way about same time as others; supposes 12 or 15, with what were already under way. Saw the Wells, her boat was ashore at Cape island; saw it come off with three men, who went aboard of her; Wells was ahead of him beating up; wind NW., a stiff breeze; thinks he was going 4 or 5 knots through the water, and 3 by land, (side way was light;) did not see act of collision; saw them together, and Wells sink; was on her starboard tack heading W. by S.; was about ½ to leeward of them, S. and W. of them; our next tack to Jersey shore came up to 25 y'ds of them; Wells sunk from ¼ to ½ a mile from Crow shoals, ⅔ from Jersey shore to shoals; there was room enough between her position and the shoals for her to have tacked to west; witness was on deck all that time; made from 6 to 10 tacks from Taverns up to that place; his vessel was a dull sailer, and she made more tacks than other vessels; has since been several times between wreck and shoals beating out against wind, drawing, with his centre-board down, about 18 feet; always had it down beating to windward; could see position of wreck, and
47 had plenty of room to beat out.

Cross-examined.

At time of collision held his westward tacks from ¼ to ½ mile at time, and came within 25 y'ds of wreck to leeward; fetched out below steamboat wharf on Jersey shore, he thinks; did not take bearing of wreck from steamboat dock; supposes it was about SW., several other vessels about there all beating in.

John H. Copes, (sworn.) Master of steamboat Delaware about 2 years; previous to sailing steamer had experience on bay for 20 y'rs, including Cape May channel, Delaware; runs from N. York to Philadelphia, landing at Cape May. In summer season, 2 trips per week, (each way,) and in winter, 1 and 1½ according to weather. Noticed the wreck, because she was in his track going to steamboat wharf, coming round, &c.; cannot fix time wreck was there; she was lying about 500 y'ds from Crow shoal, ⅔ way across from Cape May shore; no difficulty of tacking to west of her position to west in vessel drawing 10 ft., and could safely run on that tack 400 y'ds.

Cross-examined.

Began sailing st. Delaware in Nov., 1854; before that was
48 in Kennebec; went from latter to former, in same line; was 3 y'rs in K. as pilot and master continuously; went past wreck next morning after she sunk; has been in and out that channel at all times of tide; wreck lay W. ½ N. from end of steamboat wharf; dock runs out into the stream 300 to 350 feet.

Smith Wildin, ex'd as to interest. Owned ¼ of sch'r Ann Caroline at the time of collision; John Sedgwick, Leonard Church, Martha Beaston, (widow,) his sister-in-law, each a quarter part.

Answer was, in the first instance, put in in name of witness and others, and sworn to by witness.

Examination postponed to bring into court the files and orders in the cause.

THURSDAY, *Jan.* 3—Continued.

May 23, 1855.—Order by Judge Ingersoll to strike name of wit's from pleadings.—(See p. .)

Oct. 4, 1855.—Order by Judge Ingersoll to disch'g stipulation of wit's, and that cl'm'ts file new stipulations.

Examination continued.

He signed bond on bonding vessel; he resides at Newark, N. J.; vessel was licensed and enrolled there; Sedgwick resided there; still does; Mrs. Beaston resides in Brooklyn; Church, Lee, Mass.;
49 witness sailed her on share of freight; vessel paid her own repairs; has been paid his interest in vessel in bank bills; sold and transferred vessel after suit was brought; did not sell out in order to be a witness; did not know he could be one.

(Ordered direct ex'n to proceed.)

Direct.

A mariner; not now in any particular business; been 27 y'rs at sea; master of A. C. at intervals 6 or 7 y'rs, until last 6 months; was in command at collision, his voyage from N. Y. to Smyrna, (Del.)

Got under way from Cape island, made 6 or 7 tacks before reaching Crow shoals; could not, on that wind, have reached it with one tack; had not noticed W. particularly till near coming together; there were vessels all around him; was on his short tack towards shoals at collision; on previous tack went ½, or a little more, across to Jersey shore; when he tacked did that for a vessel standing along lee shore; that vessel had gone about only a few minutes previously; could not have avoided her without tacking, because of another vessel to leeward, a little on his starboard bow. Wit. was at wheel on her larboard tack, and when going about called Sheridan to take the
50 wheel, when A. C. was coming into the wind; he did so; the hitches in main sheet were working loose, and wit's got them tight, then jumped into cabin for chew of tobacco, and as he came on deck sails had just filled and near had drawn jib away; vessel light; does not at once get headway; often fall back; A. C. did several times that day; then he saw W. on larboard side, about 50 y'ds off; sung out to put helm of A. C. down, and to light head sheets; then called to W. to heave her wheel down, and directed mate to hail also for W. to go about; no attempt was made on her to do so; forward rigging of W. caught jib-boom of A. C. and carried it away, and main rigging caught bowsprit of W., and then two came together, and that brought A. C. by head round to NE. on the opposite or larboard tack; when he saw W. coming there was no person on her deck except helmsman; was not positive whether that was the master; saw two men and two boys come out of her cabin (4 in all) after he hailed the W.; the mate was one; knew him by his dress; thin coat; no overcoat or mittens; he came on board A. C. in small boat; appeared dry in his dress, and not as if he had been wet. Asked master of W., when he came on board, why he had not gone about; showed
51 him sch'r for which A. C. had just tacked; his reply was, "I never saw you." He could not have gone under stern of W. A. C. had got on no steerage way; could not answer her wheel at all; W. made no answer to his hail.

Cross-examined.

Thinks bearing of collision from steamboat dock was about W. by S.; did not make particular observation at the time; was requested by owners to bring on any witnesses he found who knew anything of the transaction; has not put himself much out of the way; come round on tack last before collision above light-house; has been a good deal up the bay; knows both channels sufficiently to act as his own pilot.

Depositions for claimants.

James Sheridan, dep. Dec. 8, 1854; one of crew of A. C.
Michael McCormick, do. do. do.
Thomas Cassidy, do. do. do.

Capt. Smith Wildin, (again.) Paul Peterson was stationed forward on the lookout at time of collision; he continued a month or two after, and then left, (28 July left N. Y.,) before A. C. was libelled. He shipped for San Francisco; has not returned since. Thinks the A. C. was libelled in August.

52 James Germain, dep., Dec. 25, 1855; master of John Harris.
Richard H. Endicott, dep. do. do. master of L. H. Endicott.
Samuel Baker, dep. Dec. 30, do. of Triumph.

Evidence for libellants.

Richard Squires, (again.) Was dressed at that time in a good winter undersuit; had on no overcoat; had mittens at time; cannot say whether he had them on or not at time of collision; had on a close-bodied woollen coat; woollen vest; woollen pantaloons, nearly new; silk handkerchief and woollen comfortable over it; oil-skin pants (overalls;) thick boots; did not borrow any clothes on A. C.

Capt's watch was left in New York, because witness went to shop where it was for repair, and it was not done; went there after his return, and capt. took the watch. He had no watch at Cape; witness had one; they were at Cape nearly two weeks after wreck. Did not hear Charley say he was at wheel; was within 4 or 6 feet of him; would have lied if he said so. Thinks Capt. Wilding and Baker had some conversation; Captain Baker asked mate of A. C. why they did not see the W.; he replied "they were at time at work at rigging;"

Capt. Wildin not then present; Capt. Baker asked Capt. W.
53 some question, and thinks his answer was, he did not discover W. or did not see her. There was no vessel near W. on W. or NW.; there was a sunken one ¼ of a mile off or more; cook was a colored man.

Cross-examined.

Took off his overcoat before got under way; it was heavy and could not work in it. Capt. Baker got on board A. C. before witness; went with Capt. Baker to watchmaker's for his watch before sailing, and thinks he did after coming back. He came with capt. from Cape May; cannot tell how soon they went for the watch after that; thinks capt. got it, but does not remember certainly that he got it; remembers he talked about the watch.

James McGlinn, (sworn.) Employed as wrecker at Wells in bay; saw wound she received; went into hold, in water-armor; considered it large enough to let in a cow; it was on starboard quarter, about

midships of cabin. Been cruising about Crow shoals as wrecker; has sounded about there; to his best judgment Wells lay about ⅛ of a mile from shoal; the shoal is very abrupt there; has sounded about vessel now on shoals and not over 20 feet from edge; she lies
54 about ⅛ of a mile from position of Wells, where she sunk; the vessel now on shoals lies in 7 or 8 feet water; sunk several feet in quicksand.

George W. Smith, (sworn.) Resides at Cape island; within 2½ miles from steamboat wharf at time of collision; lived at dock; saw wreck about ½ an hour after she sunk; men were coming ashore; had nearly reached dock; wreck about ¾ of a mile W. by N. or W. from dock; quite near shoal; she was putting in from east shore, and thinks more than ¾ of a mile and not over ⅛ of a mile from shoals. Is acquainted with shoals; they are very bold; run from 4 to 5 fathoms of water almost directly on the shoals; channel is hard bottom; the shoal is quicksand; a vessel works directly down into and under quicksand; quicksand all around that region; so on island. The wreck was ⅛ a mile from buoy No. 4; next morning went out to her; it blowed too heavy to go out the day of collision; stripped her; found mainsail torn to pieces; her forward sails and rigging all sound, (foresail and two jibs.)

Never knew Capt. Wildin until 2 or 3 weeks ago, when he came down to Cape for witness; had conversation with him; he spoke
55 as if he was not on vessel; when he asked witness questions he said, "They told him so and so;" they said foresails were torn; he said, "If you will say they were torn you will be well paid for it;" witness*ed* answered he could say nothing of the kind, as he knew they were not torn.

Cross-examined.

Isaac W. Buck was at time present with Capt. Wildin, and knew that witness was acquainted with state of wreck; witness had bought ½ of wreck of W. H. Wells; have given up the vessel as a total loss. Witness' father-in-law (John C. Little) owned the other half; has been here as a witness.

Capt. Wildin told witness he came down to look up witnesses; wit. keeps hotel, and is a wrecker in that region; has worked on 3 or 4 wrecks in that neighborhood; is not a sea-faring man.

Re-direct.

Capt. Baker staid 2 or 3 weeks at his house after the wreck; had no gold watch with him; said he made lucky escape in leaving it in New York. The mate had a coat on when he came ashore; had on a winter dress, and appeared warmly clothed.

Captain came to his house directly after the wreck, and staid 2 or 3 weeks.

56 FRIDAY, *Jan'y* 4—Continued.

Evidence for claimants.

Smith Wildin, (again.) When witness had the conversation with Capt. Baker on A. C., Squires was not present; he was then in the small boat; witness never told Capt. Baker that he had not seen the Wells. Did not tell George W. Smith if he swore to certain things he should be well paid. Wit. put up with a man of name of Buck, who introduced him to Smith; did tell him if owners of A. C. wrote to him to come on as a witness they would pay him for his time; mith said he would not come into court any way.

Cross-examined.

Made transfer of his interest in A. C. to Mr. Sedgwick, April 23, 1855; was present when the depositions of three of his crew were taken Dec. 8, 1854; witness went with them. Persons on board his vessel were, himself, Robert J. Scarborough, (mate,) Michael McCormick, (cook,) Thomas Cassidy, (seaman,) James Sheridan, (do.,) and Paul Peterson, (do.) Is positive all were on deck except the cook; his business was on deck and below, and is not certain where he was at time of collision.

Answer.

57 Mr. C. L. Benedict opens the argument for libellant.
Mr. Donohue " " " claimants.
Mr. Owen argues for the claimants.
Mr. E. C. Benedict concludes the argument for the libellant.
Cur adv. vult.

58 U. S. district court.

WILLIAM H. WELLS
vs.
THE SCH'R ANN CAROLINE, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Richard D. Hickman, being duly sworn as a witness for the libellant, says: I am a seaman, now mate of the sch'r Only Son; I have followed the water since 1833; I have been mate for about 10 years; I have been master of a vessel; I saw the collision between the John C. Wells and the Ann Caroline; I was mate and sailing-master or pilot of the sch'r Mary E. Matthews.

We were astern of the Ann Caroline, beating up the bay. The wind was about N.NW.; about a 5-knot breeze. I saw the Wells when she tacked, below the buoy, on Crow shoal; she then come on to the larboard tack; we tacked just after her, and came on to the ame tack; we were then sailing not more than $\frac{1}{4}$ of a mile of that of she Ann Caroline, on the larboard tack, and a little to leeward of t

her. The channel there, from the shoal to the shore, is considered a mile and a quarter wide; Cape May shore is bold shore there.
59 The Wells was loaded; there was then about seven feet of water on the shoal; I saw Ann Caroline when she tacked over towards Crow shoal; I saw the vessels when they came together. The Ann Caroline was then going 6 knots an hour, I should think. We had a very fine breeze blowing fresh; a full-sail breeze. The Ann Caroline had been long enough on that tack to have gathered full way, and was under full headway when she struck; I was steering at my wheel and watched the vessels; I saw no one on the lookout on the Caroline. She struck the Wells about the forward part of the cabin, aft the mainmast, a very heavy blow; it sunk the Wells in about 3 minutes' time; I heard the blow very plain where I was.

The Caroline could have gone about, or gone under the stern of the Wells. There would have been no difficulty at all in her going under the Wells' stern if she had been keeping a lookout; I saw no vessel in the way of the Caroline when she tacked, and don't think there was any; I don't know as the Wells could have done anything to have avoided the collision; she could not keep off; if she had went about she would have got on the shoal; she could not have
60 gone under the stern of the Caroline if she had tried to do it; she would have run into her. The Wells was fartherest to windward. The Ann Caroline had the best of the channel, and could easily have been avoided the Wells.

My opinion at the time was, that the Wells could not have avoided the collision, and that it was a shame that the Caroline run into her, under the circumstances.

Cross-examined.

I don't know either of the parties to this action. The "Mary E. Matthews" was not more than a quarter of a mile astern of the "Ann Caroline" when the collision occurred, and not more than a quarter of a mile from the Wells; when the Wells tacked below the buoy our schooner was not more than a quarter of a mile astern of her, and a little to the leeward; about fifty yards I should suppose; I can't come very near to it. I don't recollect of seeing the "Ann Caroline" just at that time; I don't know how soon after the "Wells" tacked before we tacked; it was a few minutes; we were going
61 about five knots; I don't exactly know how far it is from the buoy to the point where the collision occurred; a couple hundred yards I should suppose. The buoy was to the windward of the channel, and the collision occurred about 200 yards or more to the leeward of the buoy; not a great deal more. I first saw the "Ann Caroline" outside the beach; we lay there together at anchor; we got under way somewhere from 1 to 2 o'clock of the same day on which the collision occurred. The Wells lay there also. There were other vessels, about eleven in all, all bound up, and they all got under way about the same time; I don't recollect the names of the other vessels. The Wells got under way before the Ann Caroline; don't know how much before; we all got under way about the same time. It was about

5 miles from where the "Matthews" got under way to the buoy, and not more than four from where the Wells got under way; but
62 how far it was from where the Caroline got under way I can't tell; she was overhauling us both. There must have been several tacks before reaching the buoy. When the Ann Caroline tacked and stood toward the Jersey shore, immediately before that in which the collision occurred, she was a mile or more from the buoy to the southward and eastward; that far or more to the eastward of the buoy I should think she was when she made that tack, about 200 yards from the Jersey shore. I saw her on that tack; I observed her because she passed just to the windward of us, we being then on the opposite tack. We were on the starboard tack when the Caroline made her last tack; I am not certain about this; we had four or five full sails on; she was a fore-and-aft schooner. When the Ann Caroline passed us to the windward the Wells was ahead of us on the same tack; I don't recollect how much ahead of us. The Ann Caroline was not then any ahead of her, (the Wells;) she was overtaking her, as she did us. There were about eleven vessels altogether. When the Ann Caroline made her last tack towards the shoal, I should think our vessel was a mile or more to the westward of her; I can-
63 not tell exactly; the Wells was just ahead of us; I don't recollect how far away from the Caroline she was; I believe there were some vessels ahead of the Caroline at the time she made this tack; I don't know how many were ahead of her. The "Fishing shoals" are on the Jersey shore, and are about 5 or 6 miles from the buoy. It was close by the Crow shoals, where the buoy is, that the collision occurred. The whole width of the channel here is about 1¼ miles. The Wells could not have gone under the stern of the Ann Caroline, because the latter was so far to the leeward that she would have run into her. In such case she would have struck the Ann Caroline in her starboard side; I guess close to her bows. Not far from head to head. The Wells could not have gone about because of the Crow shoals, which were not more than 200 yards off.

Captain John Hunter, of our schooner, was on deck at the time. I don't think he saw the collision. I remarked to him and asked him if he saw it. I don't recollect what he said. He did not see the collision, but saw the vessel just before she sunk; our vessel
64 drew about seven feet at that time.

Re-direct.

Q. Explain what you intended to say, when in your cross-examination you say that the Ann Caroline, when she made the last tack but one before the collision, was about 200 y'ds from the Jersey shore.

A. I was speaking of the last tack.

RICHARD D. HICKMAN.

Sworn before me this 23d March, 1855.

CHA'S ELLIOT SCOVILLE,
U. S. Comm'r.

Endorsed: 11, 341. U. S. district court. William H. Wells *vs.* The sch'r Ann Caroline, &c. Deposition of Richard D. Hickman. Benedict, Scoville & Benedict, lib'l't's proctors, 74 Wall st.

Filed Jan'y 3, 1856.

65 U. S. district court.

WILLIAM H. WELLS
vs.
THE SCH'R ANN CAROLINE.

SOUTHERN DISTRICT COURT, *ss:*

Somers Hand, being duly sworn, says: I am a shipmaster. I have followed the water 25 years or so; been master almost all the time. I was master of the sch'r Cornelia at the time of the collision between the Wells and the Ann Caroline; I saw that collision; I was coming up, beating in with several other vessels. The wind was N.W., or N.NW., a good lively breeze. We were making five or six miles an hour through the water. I saw the Wells after she had tacked; she then stood on the larboard tack; the wind on the larboard tack; the wind on her larboard side with booms off to starboard; she was standing along by Crow shoals from 150 to 200 yards distant, as near as I can come to it; she was, on that tack, going about the same rate the rest of us was. I came also on the larboard tack; I tacked to westward of the buoy. We were all making a long leg and a short leg. The Ann Caroline was ahead of us a piece, not
66 a great way; she changed her course to make her short leg across towards the shoal; she came into the Wells, striking her aft midships. I saw her jibboom make a hole through the mainsail. The Caroline at the time of the blow was going her full speed under that breeze; her sails were full; I was looking at her, and saw no one on her; there might have been men there but I did not see any. If within 50 yards from the Wells the Caroline had put her helm up she would have cleard her—gone under her stern. I don't know certainly that she could at that distance, but I think she could; I saw nothing to prevent the Caroline going under the Wells's stern—nothing at all. The Caroline ought to have kept a better lookout, and given themselves time, and gone under her stern. It was right in open day time.

When it was found that the Caroline was not keeping off, the Wells could not have avoided her by putting up the helm.

I saw vessels ahead, but none that caused the Caroline to tack. There was room enough there to work the ship.

I think if there had been a lookout on the Caroline there
67 would have been no collision. I at the time formed the opinion that the Caroline was to blame.

When making a short or long by the general rule is to let the long by keep on her course. That rule is not always, but coasters generally do it.

Cross-examined.

I live at Cape May; I do not know William H. Wells; I know Capt. Wilden, one of the crew of the Caroline; I know no other of her owners; I never had any business connexion with Capt. Wildin; I have never spoken to Wilden about the collision except the day after it happened; have not seen him since, or any of the parties on either side.

When I saw the Wells on her larboard tack, I cannot say whether the Caroline had gone about on to her starboard tack or not. The Wells was to windward of us, and some ahead, some two or three hundred yards; can't tell exactly. The long by was towards the Jersey shore, and the short by towards the shoal. We stretched as far as we could toward the Jersey shore before we tacked; my long tack was a mile and a half or more from the buoy; we
68 all stretched as long as *as* we could; I had only been about a few minutes when the collision occurred; had only gone a little ways. I didn't see the Ann Caroline go about to her larboard tack.

The collison took place more than a half mile from the Jersey shore, between $\frac{5}{8}$ and $\frac{3}{4}$ of a mile from the shore; the collision a little to windward of my tack; I sailed my tack out, I think; don't recollect how far I went on the larboard tack after I saw the collision; I saw the Caroline on her long by ahead of us, on the stretch, gaining on us; she was sailing nearer the Jersey shore than we—about as close on the wind—the Ann Caroline was to leeward of the Wells. The vessel on the best tack keeps her tack. This rule don't prevail if the vessel on the worst tack has gone as far as she can, but I don't consider that the Caroline had gone as far as she could.

If one vessel is getting under way, and the other is under way, the one under way is expected to get out of the way. The Caroline's bow laid right on side of the Wells, till the Wells sunk from her; she slewed round her stern towards stern of the Wells. Ten or a dozen of us together started outside the Cape.

69 I don't know that there was anything to prevent the Wells going about. I don't think she could have gone about so as to have avoided the collision. I suppose that she calculated for the Caroline to keep off till they got so near that couldn't keep off. I suppose that she might have gone about when Caroline went about; might have gone about when 20 miles off, with just as good a reason. I suppose was 300 y'ds from where Caroline tacked to Wells.

SOMERS HAND.

Subscribed and sworn before me this 29th day of June, 1855.

JOHN G. VOSE, *Comm'r of Deeds.*

We consent that above deposition be read upon the trial of this cause, subject to objections and exceptions, with like effect as if the witness was before the court, and the testimony given orally.

June 29, 1855.

OWEN & VOSE, *for Cl'm'ts and Resp'd'ts.*

Endorsed: 11, 341. U. S. dist. court. Wm. H. Wells *vs.* The sch'r Ann Caroline, &c. The deposition of Somers Hand, taken June 29, 1855. Benedict, Scoville & Benedict, lib'l't's proctors.

Filed Jan'y 3, 1856.

70 U. S. district court.

THE SCHOONER ANN CAROLINE, her tackle, &c., *ads.* WILLIAM H. WELLS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James Jermain, a witness produced, sworn, and examined *de bene esse* on the part of the respondents in this action, deposes and says: I am in my 28 year; I live at Cape island; I am a seafaring man, and for the last 20 years have been in the constant habit of going up and down the Delaware bay, through Cape May channel; I remember the collision which occurred in that channel between the sch'r W. H. Wells and the Ann Caroline, which I believe was on the 11th of February.

I commanded the sch'r John Harris; I have commanded her for the last six years; she is 138 tons register.

I got under way on that day, under the island, within a quarter of a mile of the Wells. I saw the Ann Caroline there also; she lay off the upper end of Uncle Eph.'s shoal, pretty much abreast of
71 the Taverns. There were between twenty and thirty sail lying there, and they all got under way about the same time; some ahead of others. I was very near in the middle of the fleet, as near as I can judge. I made from four to six tacks before I got to the buoy on the lower end of Crow shoals. The wind was northwest; it was blowing a stiff breeze, so that you could not carry gaff topsails. It was very cold and clear, so that it made ice. We were going between four and five knots. My vessel was slow; she was light; had no ballast in her, and there was quite a heavy sea. The sea was a cross-chopped sea, all up and down, so that you could not do much with a light vessel; a loaded vessel would work quicker than a light vessel.

I did not see the vessels go together, but I saw them while they were together, before the Wells sunk. I was standing on the short tack from the Jersey shore to the southward and westward, with my vessel's head right on the shoal, when I first saw the vessels together, I was then to the leeward of them. I continued on that tack, and passed about a hundred yards astern of the wreck, and con-
72 tinued on toward the shoals (after I passed) about three-eighths of a mile, and then I went about and stood again towards the Jersey shore. My vessel had a centre-board, the whole of which was down, so that she drew seventeen feet of water; she did not touch bottom.

The Wells lay very near three-quarters of a mile from the Crow

shoals towards the Jersey shore—all of that; she might not have laid so far from the shoal part as that. I think she was all of that, but I can't say certain.

I saw, at the time the vessels were together, several vessels ahead of them, as many as seven or eight; they were pretty much all around; they were as many as eight or ten ahead, some were two or three miles off; there were some pretty near ahead of them, but none that I recollect; there were several within a quarter to half a mile off; there was a vessel sunk after this; she struck on the Crow shoals, about a mile above where the Wells sunk; she was above the steamboat landing.

Another vessel struck between a quarter and a half mile above where the Wells lay, nearly abreast the steamboat landing.

73 I don't know of any other vessels that have struck, except those since the collision; these lay very much in the way. The first schooner that sunk lay in three fathom water; the last one fetched up in eleven feet of water. The captain having told the pilot that she only drew 9 feet.

It is three miles from the Taverns to the light-house, and about a mile or mile and a half from the light-house to the buoy.

With the wind as it was on that day and the sea, a vessel light in going about would lose her headway and lie dead in the water, and fall off before she would get headway; a loaded vessel would not be stopped but little; she would hold her headway.

The tide rises here between five and six feet.

There was room enough between where the "Wells" sunk and the Crow shoals to have allowed her or any other vessel that goes through that channel to have tacked and stood over towards the shoals.

Being cross-examined.

I anchored off Cape island the night before. I lay right abreast of the "Atlantic House," within about half a mile of the shore. The Ann Caroline was not within a mile; she was right at the

74 upper end of Eph. shoal, I think. The Wells lay near a quarter of a mile to the westward of me, within a quarter of a mile of shore. I got under way about twelve o'clock in the day, at the flood tide, which I think was about 12 o'clock—all about the same time. The Wells and Ann Caroline a little ahead of me. It took us but a very short time to get to the light-house, as we fetched there by making one tack. No one made two tacks before we fetched the light-house. After we got up our anchors, we stretched along stretch down to the southward and westward, then tacked to the northward and westward to the light-house, then several short tacks. This collision happened between the steamboat dock and the light-house, a good bit nearest the steamboat dock. When I first saw the vessels together I was within one hundred yards from them. I was right to leeward of them, heading to southward and westward; I held on that tack over three-eighths of a mile. I can't form any esti-

mate of the time of day when the collision took place. I did
75 not observe the time; we had enough to do that day to attend to our business that day, without attending to other people. I went up the channel between Crow shoals and the Jersey shore, to Morris river, twenty miles. I tacked on to the tack on which I was, when I saw the vessels in collision nearly midway between the light-house and the steamboat wharf, near at the wharf. The nearest vessel which I saw up the channel was within two hundred yards; there were several within that distance or a little more up the channel to the northward and westward.

JAMES JERMAN, JR.

Sworn before me this 29th day Dec'r, 1855.
JAS. W. HALE, *Com'r of Deeds.*

It is agreed that the above deposition may be read by either party upon the trial of this cause, subject to all legal objections.
BENEDICT, SCOVILLE & BENEDICT.

Endorsed 11, 341, U. S. dist. court. The Ann Caroline, her tackle, &c., *ads.* William H. Wells. Deposition of Capt. Jer-
76 main on *on* part of resp'd'ts. Owen & Vose, proctors.

Filed Jan'y 3, 1856.

Due service of a copy of within deposition admitted Dec. 29, '55.
BENEDICT, SCOVILLE & BENEDICT,
Lib'l's Proctors.

U. S. district court.

WILLIAM H. WELLS
vs.
THE SCHOONER ANN CAROLINE, her tackle, &c.

It is hereby consented that James Sheridan, Michael McCormick, and Thomas Cassidy be examined *de bene esse* in this cause, as a witness on the part of the claimants, at the office of Owen, Betts and Vose, proctors for said claimants, No. 72 Wall street, on Friday, the 8th day of December, inst., at 2 o'clock in the afternoon of that day; that the deposition of said witness, when sworn to before a commissioner of deeds, may be read in evidence on the trial of this
77 cause with like effect, subject to all legal exceptions, as if it had been regularly taken before a justice of this court under an order issued for that purpose; that the same need not be filed, but may remain in the possession of the claimant's proctors, a copy be ing furnished to or allowed to be taken by the libellants' proctors.
New York, Dec. 6, 1854.
BENEDICT, SCOVILLE & BENEDICT,
Proctors for Libellants.

Endorsed: United S. district court. William H. Wells *vs.* Th Sch'r Ann Caroline, &c. Consent to ex'n wit's.

United States district court.

THE SCH'R ANN CAROLINE, her tackle, &c., *ads.* WILLIAM H. WELLS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James Sheridan, a witness produced and examined *de bene esse*, on the part of the respondents in this cause, being duly sworn, deposes and says: I am 24 years of age, and reside in New York; I am
78 a seafaring man; was one of the crew of the Ann Caroline, in February, 1854. She was a fore-and-aft schooner of 160 tons register, (about.) We left N. York for Smyrna, in Delaware bay, 10 Feb'y, 1854—Captain Wildin was master; Robert Scarborough was mate. There were three men before the mast, including myself, all able seamen, and a cook besides; had no cargo; in ballast—light ballast. We went into Delaware bay on the morning of the 11th of Feb'y, about 1 o'clock; wind was northwest, blowing a full-sail breeze; we made between 5 and 6 knots an hour; we were carrying four lower sails; had no topsails on; we were beating up the bay. On the tack previous to the one on which the collision occurred we were heading north by east. We had then our larboard tacks aboard; were on our larboard tack. The bay is counted 10 miles wide there; we did not beat out the tack fully; we could have gone, perhaps, about ¼ of a mile further on that tack. The reason we did not beat out our tack was that there was a schooner standing off shore on the opposite tack. I did not see the schooner when she went about; when I first saw her she was standing on a course across our
79 bows; she was a little on our lee bow, about from two to three hundred yards off when I first saw her. We approached within about 50 y'ds of her, when we went about. She then was a little on our starboard bow when the order was given to go about. If we had not gone about, and she had kept on her course, there would have been a collision. We had orders from our capt. to put about at this time; all hands were on deck; the capt. had the wheel; our vessel went about and filled away on her starboard tack. After she filled away I took the wheel. From three to five minutes after our vessel filled away, the captain looked under the boom, and sung out "there's a vessel ahead." I saw the vessel immediately after; she bore a little on our lee bow, not over 50 yards off; she was heading to the nor'ard on her larboard tack—the same tack we had been on before we went about; she was going, I expect, between 6 and 7 knots; she was a fore-and-aft schooner, loaded. Our vessel had little headway; had some; she had not good steerage headway; not enough to make her answer her helm quick. Captain, upon reporting the
80 vessel, ordered me to put the wheel down; this tended to make our vessel "luff;" the order was obeyed immediately. I got the wheel hard down before the vessel came together. Our vessel had come up to the wind very little, if any, before the collision. We

struck midships on her starboard side. Our jib-boom first took her foresail, which carried away our jib-boom and all the jib-boom rigging, and passed on and came into her midships. The blow turned our vessel clear round upon the other tack. Before our vessel went about the Wells must have been to windward of us and astern. I did not see her until after we went about. Before we went about, and while the two vessels were on the same tack, there was nothing to prevent the Wells from seeing our vessel; she could have seen our movements to go about if they had looked.

Q. If the Wells saw your vessel in the act of going about, what, in your judgment, should she have, considering the position she was in, in reference to your vessel?

(Obj. to.)

A. She ought to have gone about.

Q. Was it not proper navigation for her to hold her tack after seeing you go about?

(Obj. to.)

81 A. She ought either to have gone about or gone under our stern. In order to do that, (that is, to go under our stern,) she ought to have kept off. After the Wells was reported, I saw no change in her course before the collision. I should have observed it if there had been any. About 3 o'clock the collision occurred. In consequence of the collision the "Wells" sunk. All the crew, including the master, came aboard of our vessel, and afterwards went ashore in their own boat. After the master of the Wells came aboard of our vessel I heard a conversation between him and Capt. Wildin in regard to this collision.

Q. State what that conversation was.

(Obj. to.)

A. I heard our capt. ask the captain of the Wells why he did not go about? He said he never us; and asked our captain why he did not go about for him. Our captain said we were after going about, and had no steerage way on her. Our captain said we were after going about for the schooner ahead, which I have before spoken of. I heard no dispute in regard to this matter, nor of the propriety of our going about. I had conversation with the man who was at the wheel of the Wells.

(Obj. to.)

82 He asked me who was steering, and I said "I was;" and then I asked him who was steering his vessel, and he said "he was." He told me he belonged up the North river.

A vessel with a full cargo will, under headway, always answer her helm quicker and easier than a vessel in ballast, which is lighter. A loaded vessel will go about quicker than a lighter one. There was a considerable sea on at this time. We were about three miles inside Cape May, and nearest the Jersey shore. There was 8 or 9 miles sea room off to the westward of us; there were quite a number of other vessels beating the same direction in sight at the time above referred to.

Cross-examined by Mr. Benedict.

I have followed the water between 6 and 7 years; I am an Irishman; I am in the employ of Captain Wildin, on this same schooner. He shipped me again latter part of September last; I was cook first, then before the mast, and have been mate for some three or four voyages; I had only been mate one voyage before this accident. When the capt. called me to take the helm, I was tending the centreboard purchase; the mate was busy splicing a piece of rope for a purchase. I don't know what the rest were doing; I saw them
83 all on deck when I took the helm. The mate was at work midships on the larboard side; the other two men stood close by him, the last I saw of them. After I took the wheel I could not see them. I could then only see the cook on the windward side; the cook was leaning against the galley, doing nothing. When I took the helm the capt. trimmed the main sheet, and then went below; when we went about we were, I should think, about half a mile from land. The mate and the other two men trimmed the head sheets when we came about; after they had trimmed the sheets the mate went on finishing splicing his runner. I did not see the other two men after we came about.

I saw the schooner which was ahead of us a few minutes before we went about; we went about, and then he went about after we did.

The course of our schooner before we came about was about 50 yards distant from the course of the schooner which was ahead of us.

Our schooner can go from 5 to 6 knots an hour under the
84 sail she had on that breeze. I am not sure that our jib-boom tore the schooner's foresail; but it must have touched it.

If we had kept on our course we would have beaten out our tack in from 15 to 20 minutes, as I think. I do not know that I heard all the conversation between the two captains. When we struct her, the Wells went down very quick.

Re-direct.

The schooner which was ahead of us went about just before we did, and just at the moment we were going about she hove about back upon her former tack. Our captain trimmed our main sheet while in stays. I believe he went immediately below after that, and returned right away. He was not gone over a minute or two, and then it was that as he came out of the cabin door he looked under the main boom, and sung out, as I have before, in my direct examination, stated. After the captain sung out, I do not know what could have been done on our vessel to have avoided the collision, other than putting our helm down as we did. She would not have worked; she had
85 not headway enough to go about.

Q. Did you hear a conversation between your mate and the capt. of the Wells at or about the time he came aboard of your vessel respecting the collision?

(Obj. to.)

A. I did. He asked the captain of the Wells, why the devil "he did not go about;" to which he replied, "I didn't see you; there goes all I have in the world."

When I first saw the Wells, I saw no one on her except the man at the wheel; at that time she was about 40 or 50 yards off from us; she was close by.

JAMES SHERIDAN.

Sworn to before me this 8th December, 1854.

GEO. HARGAN,
Comm'r of Deeds.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Michael McCormick, a witness produced and examined in the above cause on the part of the respondents *de bene esse*, being sworn, says:

I am 22 years old next September; I reside in Newark; I am a seafaring man; have followed the water these 8 years; I was aboard of
86 the Ann Caroline at the time of the collision with the schooner; I was cook on this voyage; I have been sailor at different times; I have been cook, and at other times before the mast; I was on deck at the time of the collision; I stood aft on the quarter before the collision; I had been in the cabin; I may have been on deck 10 or 15 minutes before the collision; we had four lower sails on; the wind was ahead—dead ahead. I was on deck before we tacked, but can't tell what course we were on before we tacked; I saw a schooner ahead before we tacked; when we tacked, the schooner which was ahead was forty or fifty yards from us. We had been on the same stretch with the schooner ahead and behind her; I saw the schooner ahead tack. She tacked before we tacked. We went about for that schooner. If we had not gone about there would have been danger of our running into her. I heard the captain's order to go about; after we went about we were on the starboard tack. The first I saw of the sch'r Wells was just after we had got about. She then bore a little on our larboard bow to
87 leeward; she was on her larboard tack, and when I first saw her she was about the length of our vessel away from us. We had been about about 5 minutes when I first saw the Wells; she was then heading across our bows; our vessel had not at that time gathered steerage way enough to mind her helm. Our captain told the man at our helm to put the wheel down; saw the man putting the wheel down. There was nothing to prevent the Wells seeing our vessel go about.

Q. If the Wells saw your vessel go about, what ought she to have done?

(Obj. to.)

Ans. She ought to have gone about. At the time I saw her she could not have gone under our stern; if she had been three or four lengths further off I think she could have. I have been deck hand four years in all on fore-and-aft vessels. They had the whole of the bay to the westward 8 or 9 miles. At the time of the collision our

capt. was on deck; can't say how long he had been on deck; he had been below, I should think, a minute or two. After we went, and just before we came together, with that exception, he had been on deck a long time; saw no one at all on the deck of the Wells
88 until we ran foul; I saw two boys and the captain come aft after we ran foul; those were the only ones I saw on deck; I could have seen whether there had been any other person on deck.

Cross-examined.

I am in the employ of Capt. Wildin, and, save two weeks, have always been in his employ since the accident. When we came about the captain put the helm down and then trimmed in the main sheet. James Sheridan took the wheel when the capt. trimmed in the sheet. I saw him take the helm, and he held it until the accident; I saw him hold it. When he took the wheel I was standing on the quarter by the cabin; I then went into the cabin; the captain was there when I went down; I came up right away—within a minute; I came up before the captain did; I don't know what I went down for, nor what I did when I got down there; I can't recollect. I don't know what the captain was doing down there: when I came out I walked around forward by the house, on the windward side; as I was walking
89 forward, and when I had got as far as the corner of the cabin, the captain came out and sung out "Have none of you seen that schooner?" The captain then told the man to put his wheel down. The galley stood amidships, about 20 or 30 feet forward of the cabin. I did not go to the galley from the time Sherjdan took the helm till capt. sung out; after I came out of the cabin I did not see the mate anywhere; before I went down I saw him splicing a rope on the larboard side, about midships. After I came out I did not see the other two men anywhere; before that I saw them on deck; can't tell exactly where they were, or what they were doing; at the time we put about I judge we were half a mile from the land. I took no notice of the schooner, which was ahead, until the capt. gave orders to go about for her. When the captain gave orders to go about for her, I then first looked at her; she was then heading off shore on the starboard tack; she had got way on her. Just as we got about she went about again on her old tack—her larboard tack. If
90 we had kept on our course we might have cleared the schooner ahead of us, when she changed back to her larboard tack, or we might not; I can't form an opinion as to whether or not we would have cleared her if we had kept on our course.

MICHAEL McCORMICK.

Sworn to before me this 8 Dec., 1854.

GEO. HARGAN,
Comm'r of Deeds.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas Cassidy, a witness produced and examined *de bene esse* on the part of the respondents, being sworn, deposes and says: I am 23

years old, and reside in Newark; I have followed the sea about 5 years along the coast and around; I have always been a seaman; I have been a first hand on the North river; I was aboard of the Ann Caroline at the time of the collision in question; I was before the mast; I was on deck at the time of the collision; I had been on deck most all the morning; we were in the Delaware bay when the collision occurred. The wind was about northwest, blowing a full sail.

91 The last tack we were on before the collision was our larboard tack. We changed from our larboard to the starboard tack at that time by reason of a schooner a little ahead of us coming about off shore from the Jersey shore; I saw that schooner about five minutes before, when on the same tack with us, stretching in shore; I saw her come about. If we had not tacked we should have either got foul of her or gone under her stern; the best way was to go about, which we did; we were pretty well into the Jersey shore. I did not see the Wells until the captain gave the alarm; they were then pretty near together, within a second. Her jib-boom was then about 8 feet to windward of our jib-boom; she was then on her larboard tack with full headway and going across our bows; we were on the starboard tack. The force of the collision slewed us around on the other tack; we had not much headway; we had not to say any kind of steerage way—not enough to mind the helm, as far as I could see. The man at the wheel put the wheel down; he was putting the wheel up to stop her from falling off after she got on her course, when

92 the captain ordered her wheel down. At the time of the collision the only man that I saw at first on the deck of the Wells was the man at wheel. After she struck I saw them all run from aft to the main rigging to get aboard of us. I heard our mate ask the captain of the Wells "why he did not go about?" The captain answered "he never saw us."

(Obj. to.)

Cross-examined.

I am now out of employ. I have not been in the employ of the respondents but one trip since this accident. At the time the capt. gave the alarm I was holding down the rope for the mate to splice it; no one was there with me but the mate. We were on the larboard side, 'bout midships; nobody else on that side but us two. I didn't take much notice of the schooner which was ahead until the captain told us to go about; the mate then went to lift the jib on the starboard side, and I went to larboard to trim it down. After that I walked about deck and went aft to the cabin; forward of the cabin and aft of the foremast, walking along. I was at the rope with the mate when the capt. gave the alarm about the Wells.

93 When the captain gave orders to go about I did not look at the schooner which was ahead, and I do not know of her movements. When the capt. gave the alarm he said, "Down with the wheel; does none of you see that schooner?" I then ran round to look at her; stopped for a minute, and then went forward to see what was up.

Re-direct.

All hands were on deck doing ship's duty.

THOMAS CASSIDY.

Sworn to before me this 8 December, 1854.

GEO. HARGAN,
Comm'r of Deeds.

We consent that the above depositions of Cassidy, Sheridan, and McCormick be read by either party upon the trial of this cause with like effect as if regularly taken before a U. S. comm'r; copies of said depositions to be furnished the lib'l'ts within 10 days; which copies the lib'l'ts are at liberty to read upon the trial if desirable.

New York, Dec. 8, 1854.

BENEDICT, SCOVILLE & BENEDICT,
Proct. for L'b'l't.

OWEN, BETTS & VOSE,
Resp'd'ts' Proc's.

94 Endorsed: 11, 341. U. S. district court. The schooner Ann Caroline, &c., *ads.* William H. Wells. Depositions of Sheridan, McCormick, and Cassidy. Benedict, Scoville & Benedict, proc's for lib't. Owen, Betts & Vose, resp'd'ts' proct's.

Filed Jan'y 3, 1856.

95 U. S. district court.

THE ANN CAROLINE, her tackle, &c., *ads.* WILLIAM H. WELLS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Richard H. Endicott, a witness produced and examined *de bene esse* on the part of the respondents, says: I was master of the schooner L. H. Endicott at the time I passed the schooner John H. Wells, sunk. My vessel was 187 tons register; she was a centre-board vessel. I was bound for Port Richmond, above Philadelphia. It was on the day of the collision that I passed the wreck. The weather was very cold that day; it made ice. I run my own pilot through Cape May channel; I have been running there for the last seven years, and have made from six to ten trips a year. I have been, off and on, running there for the last 15 years; once or twice a year previous to the seven years last past. The Cape May channel runs between the Crow shoal and the Jersey shore.

The wind, when I went in, was about north-northwest. It was between a six and seven knot breeze. When I came to the
96 buoy I tacked towards the Jersey shore. This is the usual course for vessels going up that channel with that wind to

take. I run my tack close in to the Jersey shore, and then tacked to the westward towards the Crow shoals. I was making the schooner on this tack right ahead or a little to the windward of it, and as I could not go to the windward of her, I went off a little and went under her stern, and then brought my vessel in the wind again. I kept this course four or five minutes; the vessel was going pretty lively, and I suppose she went from an eighth to a quarter of a mile to the west of the wreck before I put my wheel down to tack. I had at that time by centre-board all down, and with it down, my vessel drew in the neighborhood of seventeen feet, and did not touch the shoal with it. The wreck lay in the neighborhood of a quarter of a mile from the shoal to the eastward, about two-thirds of the way across the channel from the Jersey shore. My vessel would tack where the wreck lay and go to the westward, and I don't imagine that there would be the least danger in it. I passed the
97 wreck a little before sundown. I thought that about one-third of the whole height of vessel and spars was out of water; she was about $\frac{2}{3}$ under water. I saw and took particular notice of that part of her mainsail which was out of water; all of it that was above water was whole; all I could see of the foresail was whole; but I had not as good sight at that as I had at the mainsail. I could see the head of the standing jib, and that was whole. I ranged the vessel as I went under her stern by compass, and she lay with her head N. NE.

I went down through the same channel; I went down to the westward of her a couple hundred yards or so; I gave her a pretty good berth; I always run my vessel according to the water and where she will float at low water. With the wind as it was that day a loaded vessel works the quickest; a light vessel, with the wind and a chopped up sea, as it was that day, will be more likely to fall off than a loaded one in tacking.

I have seen the Ann Caroline, and I should think the Wells would work the quickest.

Being cross-examined, he says: It was clear weather; can't say what course I was on when I passed the wreck on my short
98 tack. The wind was more to the northward than it had been; I was heading to the northward of west; I won't say just the point. When I went over from the buoy to the Jersey shore I ran my tack out to the Jersey shore, which I made about half way from the point to the steamboat dock, and the next tack I fetched some distance above the steamboat dock. The channel is about $\frac{3}{4}$ of a mile from Crow shoal to the Jersey beach; I only measured it by my eye; more by a chart. The shore below the steamboat wharf and the shoal also are pretty bold, sandy and hard. I did not come to anchor at Cape island at all; I lay at Little Egg Harbor the previous night, and got under way at eight o'clock a. m., and that brought me about night. It was just about sundown when I passed the wreck. I should think it is between 3 and 4 miles from the Tavern houses to the point,

and from the point to the steamboat dock about a mile, a good long one too. We do not go by chart there; it is no use.

R. H. ENDICOTT.

Sworn before me this 27 Dec., 1855.

JAS. W. HALE, *Comm'r of Deeds.*

We consent that the foregoing deposition may be read on
99 any trial of this cause, subject to all legal objections.

BENEDICT, SCOVILLE & BENEDICT.

Endorsed: 11, 341. U. S. district court. The Ann Caroline, her tackle, &c., *ads.* William H. Wells. Deposition of Capt. Endicott on part of respondents. Owen & Vose, proctors.
Filed Jan'y 3, 1856.

Due service of a copy of within deposition admitted.
Dec. 29, 1855.

BENEDICT, SCOVILLE & BENEDICT,
Libl'ts' Proctors.

100 U. S. district court.

THE ANN CAROLINE, her tackle, &c.,
ads
WM. H. WELLS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Samuel Baker, a witness produced and examined *de bene esse* on the part of the respondents, deposes and says: That he resides in Philadelphia. I have sailed up and down the Delaware bay and river to Philadelphia for the last seven or eight years, and for the last two years I have commanded a vessel. I was in Delaware bay, in Cape May channel, on the day of the collision which occurred between the John C. Wells and the Ann Caroline; I was master of the schooner Triumph; she is 176 tons register, and draws with her centre-board 14 feet. The wind on the day of collision was northwest, a strong breeze; I think my vessel made about 6 knots an hour; it was very cold, so that it made ice on the decks; I did not see the vessels go
101 together, but I saw them while foul of each other before the Wells sunk. I was about three-quarters of a mile ahead of them, and to the windward.

Question. About how far was it from the Crow shoals to where the Wells sunk?

Ans. Well, I should think it was a quarter of a mile, or over.

Q. Upon your return from Philadelphia which side did you pass the wreck, or how far did you go from it?

A. I passed to the southward and westward of her, that is, between her and the Crow shoals, and within about fifty yards of her.

Q. How much water did your vessel draw at that time?

A. My vessel drew when I came down nine feet and a half.

Q. How far above the buoy at the lower end of Crow shoals, was it where the Wells lay?

A. I can't tell.

Q. With the wind northwest was there or not room enough between where the Wells sunk and the shoal to go about and go to the westward and towards the shoals?

A. Yes, sir, there was room enough; I have done so myself after she sunk, while the wreck was there.

102 Q. Which vessel would work the quickest that day, one loaded or one that was light?

A. One that was loaded would work much the quickest. A light vessel would loose her headway in going about, while a loaded vessel would hold her way. In going about that day I had several times to shift my helm to make my vessel stay; my vessel was light.

Being cross-examined: I had lain at anchor at Cape island the night before; I lay opposite the tavern house, inside of E'ph shoal; I did not notice the Wells at anchor nor the Ann Caroline; I did not see either of them till they came in collision. I got under way about noon; I then stretched to southward and westward a reasonable long stretch; then I made a short stretch to the northward and eastward and made the Jersey shore a little to the westward of the light-house; I then stretched off to the south and west. I cannot say how many tacks I made; as it was slack water the tide had not yet made; I tacked from the shore towards Crow shoals about a quarter of a mile below the steamboat landing; I then stretched over to s'd & west-

103 ward, and tacking to the N. & e'd, & on that tack I saw the vessels together. I can't say the distance off from the vessels; all I saw was, I looked over my stern and saw the vessel going over; I did not take any notice, not sufficient to testify to distances, but think I was about three-quarters of a mile ahead of them; I can't say what direction the buoy was from me when I tacked; I did not notice the buoy when I tacked; I can't say which way the vessels bore from me when I saw them; I think it must have been about south. On that tack I stretched along up the Crow shoal and made the Jersey shore some distance above the steamboat dock. I can't say whether when I saw them they bore over my quarter or not; I did not see either of those vessels, the Caroline or the Wells, tack at all. It was eight days or more before I returned from Philadelphia.

Can you speak with any certainty of the distance from Crow shoal where the Wells sunk?

A. I am certain it was a quarter of a mile, if not more; I did not take any more notice on my return than I did when I went up.

104 It was flood tide there when I came back, nearly high water; no breakers on the shoal then. I can't tell what direction the wreck lay from the steamboat dock. I think I was something over an hour in getting from the Tavern houses, when I got under way, to the steamboat dock, at the time of the collision.

SAMUEL BAKER.

Sworn to before me the 31 Dec., 1855.

JAS. W. HALE, *Comm'r of Deeds.*

To be read at the trial by either party, subject to all legal exceptions. Dec. 31, 1855.

B., S. & BENEDICT.

Endorsed: 11, 341. U. S. district court. The schooner Ann Caroline, her tackle, &c., *ads.* Wm. H. Wells.

Deposition *de bene esse* of Samuel Baker, for clm'ts. Owen & Vose, clm'ts' proct's.

Filed Jan'y 3, 1856.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City
105 Hall in the city of New York, on Thursday, the sixth day of March, A. D. 1856.

Present, the Hon. Sam'l R. Betts, dis't judge.

WILLIAM H. WELLS
vs.
THE SCH'R ANN CAROLINE, her tackle, &c.

This case having been heard on the pleadings and proofs and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libel filed in this cause be dismissed with costs to be taxed against the libellant.

A true copy from the minutes.

Endorsed: 11, 341. U. S. dis't court. William H. Wells *vs.* the sch'r Ann Caroline, &c. E. C. Benedict, proc'r for lib't. Owen & Vose, for cl'mt.

Copy final decree dismissing libel.

U. S. dis't court.

106 WILLIAM H. WELLS, libellant & appellant,
vs.
THE SCH'R ANN CAROLINE, her tackle, &c.

GENT: Please take notice that the libellant in this cause intends to appeal to the U. S. circuit court from the decree of the court herein.

Yours, &c.,
BENEDICT, BURR & BENEDICT,
Lib'ts' Proct's.

To Owen & Vose, esqr's, clm'ts proctors, & Geo. F. Betts, esq., clerk of the U. S. dis't court.

Endorsed: 11, 341. U. S. dist't court. The Ann Caroline, her tackle, &c., *asm.* William H. Wells. Benedict, Burr & Benedict, pr's for app'lts.

Notice of appeal. Filed March 15, 1856.

107 District court of the United States of America for the southern district of New York, in the second circuit.

WILLIAM H. WELLS, libellant & appellant,
vs.
THE SCHOONER ANN CAROLINE, her tackle, John Sedgwick & others, claimants and appellees. } Bond for costs.

Know all men by these presents, that we, William H. Wells and William E. Bird, are held and firmly bound unto the above named claimants and appellees in the sum of five hundred dollars, to be paid to the said claimants, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twentieth day of March, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas the above named William H. Wells has prosecuted an appeal to the circuit court of the United States for the southern district of New York, second circuit, to reverse the decree rendered in the above entitled suit, by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named William H. Wells shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

WM. H. WELLS, [L. S.]
WM. EDGAR BIRD. [L. S.]

Sealed and delivered, and taken and acknowledged, this 20 day of March, 1856, before me.

GEO. W. MORTON,
U. S. Comm'r.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

Wm. E. Bird, being duly sworn, doth depose and say that
108 he resides at 44 East 24th street in this city; that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

WM. EDGAR BIRD.

Sworn to this 20th day of March, A. D. 1856, before me.
GEO. W. MORTON,
U. S. Com'r.

Endorsed: Bond for costs on appeal. Benedict, Burr & Benedict, appellant's proctors.
Filed this 20 day of March, 1856.

U. S. circuit court.

109 WILLIAM H. WELLS, libellant & appellant,
vs.
THE SCHOONER ANN CAROLINE, her tackle, &c., John Sedgwick, Leonard Church, and Martha Beaston, claimants & appellees.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

The appeal of William H. Wells, libellant and appellant, respectfully showeth:

That on or about the twenty-fourth day of February, 1854, the libellant exhibited his libel in the district court of the United States for the southern district of New York against the schooner Ann Caroline, her tackle, apparel, and furniture, and against all persons intervening for their interests therein, claiming over fifty dollars, and praying, among other things, that the said schooner might be condemned and sold to pay the sum demanded in said libel, with costs, as will more fully appear by reference to said libel, and to which for the contents thereof these appellants crave leave to refer.

110 That process thereupon was duly issued against the said schooner, and on or about the twenty-first day of August, 1854, Smith Wildin, John Sedgwick, Leonard Church, and Martha Beaston appeared in said district court and claimed the said vessel, and thereafter, on or about the sixth day of December, 1854, filed their answer to said libel, praying, among other things, that said libel might be dismissed with costs in that behalf, as by reference to said answer will more fully appear, and to which for the contents thereof this appellant craves leave to refer.

That thereafter, and on or about the twentieth and twenty-first days of December, 1855, and the second, third, and fourth days of January, 1856, the said cause came on to be heard before the honorable Samuel R. Betts, judge of the said district, upon the depositions and proofs adduced by the respective parties, and the said judge having advised thereon, on or about the 6th day of March, 1856, made a decree dismissing the said libel, with costs.

111 And this appellant is advised and insists that the said decree, and every part thereof, is erroneous, inasmuch as the libellant was entitled to recover of the said schooner the amount by him demanded in his said libel.

And this appellant, for these and other reasons, appeals from the whole of said decree to the next circuit court to be held in said district, (and on said appeal he intends to have said cause heard anew in the circuit court on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court,) and he prays that the record and proceedings may be returned to the circuit court, and the said decree and every part thereof may be reversed

with costs, and that said vessel may be condemned and sold to pay the demand of the libellant, together with his costs to be taxed.

BENEDICT, BURR & BENEDICT,
Proctors for Libellant & Appellant.

Endorsed: U. S. circuit court. William H. Wells, libellant and appellant, *vs.* the schooner Ann Caroline, resp'dts and ap-
112 pellees. Appeal. Benedict, Burr & Benedict, lib't's proctors. Filed March 26, 1856.

113 U. S. circuit court.

WILLIAM H. WELLS
vs.
THE SCH'R ANN CAROLINE, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Robert H. Winsmore, being duly sworn as a witness on the part of the appellant, being duly sworn, says: I am a master of a vessel, and have been a master for about twenty-five years. I saw the collision between the Jno. C. Wells and the Ann Caroline; I was then in command of the sch'r James H. Deputy. My sch'r and the Ann Caroline got under way on the day in question at the same time; we had anchored close together; both were beating in; we had been very nearly matched in speed; we were trying to out-tack each other; we always do that when we are sailing; we had passed all the rest of the fleet but the Wells; she had got under way ahead of us; we were gaining on her. I think the Ann Caroline had been managed
114 very well, except she was stubborn in going about: I mean he wouldn't tack when he ought to; at least he wouldn't for me. He had compelled me to tack two or three times during the morning when his duty was to do so. Just before the collision the Ann Caroline and I were both on the long leg, holding towards the Jersey shore. I was sailing astern of the Wells and to leeward of her, on the same tack, however. I saw the Ann Caroline when she came on the short leg; she had not beat out her tack when she came on to the short leg; she could have gone ⅓ mile further.

There was no vessel ahead that caused her to tack, and she had got ahead of all the vessels except the Wells. The Wells was to windward of her; when I saw the Ann Caroline tack suddenly on to the short leg, I supposed he had tacked there so as to get to the windward of me. I remarked at the time to the mate that I thought he tacked to make us tack again. I had told the captain of the Ann Caroline before—that morning—when he made me tack, that
115 I would run into him if he got in the way again.

When she came on to the short leg, that brought her course across our bows. When she came on to the short leg she set her flying-jib, and then had her four lower sails up.

If she had kept the direction she was going when she crossed our bows she would have cleared the Wells under her stern. If they had not changed her wheel she would have gone under the Wells's stern.

There was a man came up out of the cabin of the Ann Caroline after she passed us, and as soon as he came up they changed the wheel and put it down. That tended to make the vessel luff up into the wind, towards the Wells, before the blow, and not more than a minute after they shifted the wheel the man at the wheel left it and ran. It was quick work anyhow—not a minute. The Ann Caroline struck the forward end of the house on the Wells, about 15 or 18 feet from the taffrail.

There was nothing to prevent the Ann Caroline going under the Wells's stern. The Wells could have tacked, but would have
116 gone ashore on the shoal if she had tried; the breakers were very close to her; she could not have come the other way, for she would then have run into us or into the Ann Caroline. It was daylight, and I was looking right at it, and I made up my mind that the Ann Caroline was what caused the collision. The other man could do nothing, and was not going very fast anyhow.

The Ann Caroline was in ballast; the Wells very deeply laden.

Cross-examined.

This collision was on the 11th Feb., 1854. I can't say positively the hour of the day; it was between 8 and 2 o'clock; the hour I did not take notice of; we got under way opposite the tavern houses; we got under way about 8 o'clock a. m.; we all got under way at the same time at slack water. I don't know how many vessels there were; there was a pretty smart fleet there, some 15 or 20 sail, but I don't know how many; I did not count them. They did not all get under way at the same place. I should think it is six miles from where we got under way to the place of collision. The weather
117 was clear, when about north-northwest; not very cold; it made no ice upon the decks; the wind was a five or six knot breeze—a good commanding breeze.

I think my vessel and the Ann Caroline both got under way about the same time; she filled off one way and I the other. I filled off inshore on the larboard tack, I believe. I can't tell how far we stood on that tack; stood on until we come as near the shore as we dare. I then tacked off-shore and stood on larboard tack off about half mile, heading about west; maybe a little northward; about west by north; then tacked again on the starboard tack, and stood in northeast by east, or thereabouts. I don't recollect exactly about the tacks; we had not yet got up to the buoy.

The last tack before the collision was below the buoy, to the southwest of it. I should think we had made a dozen or fifteen tacks before the one at the buoy; I don't know how many; it was short work of it. I saw the Wells get under way. She lay some 2½ miles ahead of us, further up the bay; she got under way about the same
118 time we did. I remember seeing the Cornelia; she lay up the bay; there were two or three others between the Wells and us; I don't remember their names; these also got under way about the same time we did. We had passed all these before we tacked at

the buoy, except the Wells; when we tacked she was ahead of us. On that tack at the bay we headed up about north or north by east; we stood out this tack; fetched up a mile above the steamboat wharf; I was not more than 20 yards from the buoy when I tacked about S. west from the buoy.

When I tacked, the Ann Caroline was to the leeward of me. I don't recollect which came on to that tack first; she was rather ahead of us, but to the leeward, I should think some three hundred yards, at the time she was on the long-leg tack, because she fore-footed us when she went about; she was light, and my vessel was partly loaded, and she had gained a little on that stretch; we had it tack and tack up to that time; she gained the two or three hundred yards the last long leg. When I tacked at the buoy, the Wells bore about
119 N. northeast of us; she was then on the long leg; she was not more than 100 yards from us; she was above the buoy when she tacked; we tacked right at the buoy. I took the wheel when we first got under way, and kept it until we got up to the point of the cape; then the mate took it. John Oliver was the mate. I staid on deck after that; my whole crew was on deck.

Re-direct.

When the Ann Caroline crossed our bow, just before the blow, she did not pass more than 50 yards off; close to us.

R. H. WINSMORE.

Sworn to before me this 4th day of April, 1859.

[SEAL.] WM. JONES,
Notary Public.

We consent that the above deposition be read on the trial of the appeal in this cause, subject to all legal objections and exceptions, except as to the manner of taking same.

April 4th, 1859. OWEN & VOSE,
Appellee's Proct's.

121 At a special term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Saturday, the 17th day of September, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

WILLIAM H. WELLS, lib'l'nt and appellant,
v.
THE SCH'R ANN CAROLINE, cl'm't and appellant.

The appeal in this case coming on to be heard, Mr. Benedict reads from apostles, on part of libellants and appellants; Mr. Owen reads from apostles, on part of claimant and appellee.

122 At a special term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Monday, the 19th day of September, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

WILLIAM H. WELLS, lib'l'nt and app'l'nt,
v.
THE SCHOONER ANN CAROLINE, cl'm't and appellee.

The appeal in this cause being still on hearing, Mr. Owen argues for the cl'm't and appellee; Mr. Benedict argues for the lib'l'nt and app'l'nt.

Cur. adv. vul.

123 U. S. circuit court for the southern district of New York.

At a stated term of said court, held at the United States court-rooms in the city of New York, on the 1st day of October, 1859.

Present: Hon. Samuel Nelson, J.

WILLIAM H. WELLS
vs.
THE SCH'R ANN CAROLINE, &c.

The appeal in this cause coming on to be heard, and having been argued by advocates for the respective parties, and due deliberation thereon having been had, it is now ordered, adjudged, and decreed, that the decree of the district court of the United States for the southern district of New York, made on or about the 6th day of March, 1856, be, and the same is hereby, reversed; and it is ordered, adjudged, and decreed, that the libellant, William H. Wells, recover of the schooner Ann Caroline, and John Sedgewick, Leonard
124 Church, and Martha Beaston, claimants thereof, the amount of the loss and damage by him sustained by reason of the collision in the libel mentioned; and it is further ordered that it be referred to a commissioner of this court to ascertain the amount of such loss and damage, and report the same to this court with all convenient speed.

S. NELSON.

Filed Oct. 1st, 1859.

125 *Testimony in reference.*

U. S. circuit court.

WILLIAM H. WELLS
ag'st
THE SCH'R ANN CAROLINE, &c.

OCT. 13th, 1859.

Benjamin Wells, being sworn on the part of the libellants, says: I have followed the water; I reside at Southhold, in New Jersey; I reside

on my farm; I was master of a vessel thirty-five years; have not followed the water for 5 years past; I have owned and do own vessels; I have built, bought, and sold them; I was acquainted with the John C. Wells in her lifetime; she was a good vessel; I knew her from the time our vessel was laid up to the time she ran and afterwards; she was owned by one of my neighbors; I have freighted her, loaded, and unloaded her. If my memory serves me, she was about ninety-eight to one hundred tons, carpenter's measurement; she was dunnaged up so as to measure 87 to 89 tons; I am not positive about that.

Q. State the value of the sch'r John C. Wells at the time
126 she was lost.

(Obj. overruled; ex'd.)

A. I should think she was worth fifty-three hundred dollars or more. I don't know that I know when she was lost exactly. I think she was between two and three years old.

Cross-ex. by Mr. Vose.

I never took part in building a vessel as a builder; I have worked on vessels some in my younger days; I am no ship carpenter; I have superintended building three at least; I have not superintended building any vessel for twenty years; have not been on the water for five years to make it my business; I have been called upon for my judgment upon the value of vessels in several cases. It is often the case that vessels are built by contract at so much per ton—that is for the hull, sometimes for the spars, &c. It is just as they agree. About forty-two dollars per ton would be the price now for such a vessel as the Wells—for the hull without the rigging, carpenter's measurement; that would include nothing but the hull, exclusive of
127 the masts, spars, rigging, chains, &c.

Q. When you speak of the hull, do you exclude anything except masts, spars, sails, rigging, chains, and anchors?

A. I mean to be understood that it is the hull of the vessel, not including anything that may be put on her; I mean the hull of the vessel alone when she is launched, for which it is so much per ton.

Q. Is there any price per ton at which the residue of the vessel is valued?

A. Not that I know of. I have heard it estimated at various prices, according to the style and taste in which it is fitted up, 60 or 70 per ton.

Q. Are we to understand that seventy dollars is the outside price per ton for completing all that is required, in addition to the hull, to make such a vessel as the Wells ready for sea?

(Obj. ex'n.)

A. Not in all cases. I did not mean the 60 or 70 dollars per ton to be in addition to the forty-two dollars per ton; I mean the vessel's hull is worth $42 per ton, and I have heard the same vessel, rigged, estimated at $60 to $70 per ton.

Re-direct.

I have been trustee for Whenly & Co. for 20 years, and
128 have bought several vessels for them.

Re-cross.

I am not interested in this suit; I am a connexion of the libellant.

129 J. Calvin Wells, being sworn for libellant, says: I have charge of marine railways *and* Greenport. In 1854 I acted as agent of several wood ships, and have bought, sold, and built vessels of the class of the John C. Wells. I knew the John C. Well; I knew her from the time of her being built up to some little time before she was lost; I equipped her, after she was launched, for the owner. She was a good vessel, somewhere from 95 to 100 tons measurement; she was keel vessel; she was what would be called a white-oak vessel, locust top, copper-fastened; her equipment was very good. I was acquainted with the value of vessels in February, 1854; I considered I knew something about vessels at that time; I considered that I knew what a vessel was worth.

Q. What was the value of the John C. Wells when she started on this last voyage in Jan'y, 1854?

(Obj. overl'd ex'ns.)

A. I considered her worth $5,500, (fifty-five hundred dollars.)

Cross-examined.

I am not one of the parties in this suit or interested in it; I am a connexion of the parties; I don't know that I ever had any
130 occasion to value the Wells until she was lost; I have always considered her worth that sum from the time she was lost; I never examined her to ascertain her value with reference to insurance, nor I never had occasion to go on her to examine her for the purpose of putting a value upon her. It would be strange if a person having so much to do with her would not put a value upon her.

Re-direct resumed.

The vessel was finished up in very good style; her rigging was the best of rope; her sails were made in good style, and she was well fitted up in every way.

Adj. to 27th Oct., 3 o'c.

Feb'y 9th, parties appear, and counsel for libellants ask for an adjournment on account of Mr. Benedict's sickness.

Respondent's witness, Peter Vanname, being here present, they desire his examination, but owing to Mr. Benedict's sickness his examination is postponed until his return, not to exceed two months.

131 U. S. dist. court.

WELLS,
vs.
ANN CAROLINE.

William H. Baker, for libellant. I was capt. of the Wells at the time of the collision; I had sailed her about fourteen months; she was

in good order in every respect at the time she was lost; everything on board of her was in good order as could be. I was acquainted with the value of vessels at the time of the collision; the Wells was worth five thousand five hundred dollars at the time she went down; she had been in the coal and the oyster business; lumber and all kinds of business. She had not sustained any injury in oystering or coals; she went three or four trips in the oystering.

Cross-ex'd by Mr. Owen.

I have owned in larger vessels than the Wells; the Wells was built of oak and pine, I think; there was oak and pine and locust in her which I saw; she was ninety tons, I think. I have never bought or sold vessels of her size, but I have of larger ones. She was built in Southhold, Long island. She was loaded deep at the time of the collision.

132 I have never examined her with the special view to ascertaining what she was worth. I don't know when the persons who owned her when I was sailing her became owners. There is a difference in the value of vessels of her size.

Q. When you say she was worth fifty-five hundred dollars do you mean to say she would bring that at auction?

A. I am not certain she would bring it at auction, but if I was going to buy a vessel I would give that for her, and I think she would bring that at auction; this price includes everything.

Re-direct resumed.

I was acquainted with her condition; she was constructed as well as she could be.

133 Richard Squares, for libellant: I have followed the water; I have sailed in her as mate; I have been on board three weeks this last time and two months before. I was on board of her when she was lost; she was in good condition in all respects when she was lost.

Q. Do you know anything about the value of vessels of this kind?

A. I have worked on vessels, building and repairing, some. I think I could know sufficient to buy a vessel for myself; I have bought and sold a part of a vessel; I thought this vessel was worth, as far as I know, five or five thousand five hundred dollars.

Cross-ex'd by Mr. Owen.

I am forty-five years old. I have never been master of a vessel; I have been coasting off and on for twenty years; I have been some of the time before the mast and sometimes mate; for the past few years I have been mate; I was mate on the Wells at the time of the collision. I have worked at the ship-carpenters' business. I owned an interest eight years ago in the sloop Calvinet; I owned one half of her. I should want some other man's judgment if I went to buy a vessel; I would not want to buy one alone on my own judgment; I have

134 not had experience in buying or selling vessels; I would not

rely on my judgment unless I built or worked on a vessel. I did not work on the Wells.

Re-direct.

I live in Fair Haven and work at carpenters' trade.

Respondent's counsel here offers give evidence as to the value of the Ann Caroline at the time of the collision.

Objected to by libellant's counsel.

(Overruled, ex'nd.)

135 U. S. circuit court

JOHN C. WELLS
vs.
THE ANN CAROLINE, her tackle, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Peter Van Name, being duly sworn as a witness on the part of the claimants, deposes and says: I reside at Staten island; I am in the oyster business; my firm is Van Name & Brothers; I own vessels and am interested in vessels engaged in the coasting trade; has bought and sold such vessels and knows the value of them; I have been owner and *interest* in such vessels for about fifteen years past. I have seen the schooner John C. Wells; my father chartered her in January or February, 1853; I have not seen her since that time: I saw her then; I went aboard of her; she lay in Oliver slip; I examined her; I was aboard of her several times; she was about 80 tons, may be a little larger; her appearance was pretty bad. I knew of the value of schooners and coasting vessels in February, 1854; I should
136 think the John C. Wells was worth, in February, 1854, about $2,500, including sails, rigging, boat furniture, and all complete.

Cross-ex'd.

I know Capt. Wildin, of the Ann Caroline. Capt. Wildin asked me to give this evidence; he asked me to do so between two and three months ago; I have known Capt. Wildin about 8 years; I have frequently chartered him to buy oysters for me; I buy and sell oysters; I have been back and forth to Virginia as master; I own in some five vessels now. I never saw the Wells till she came here on the occasion of bringing cargo for us; I was on board of her about three times then; she was discharging then; I went up then because my father was interested in the cargo; he had a scow in the same slip, and I went up to see about her too.

Q. Was not your only business at the John C. Wells, at the time you have spoken of, to see about her cargo?

A. That is the only business I had on board of her at the time; that called me on board of her; I went in her hold to look at the cargo; I went in her cabin to see what kind of a cabin she had;
137 I was in her hold some 15 or 20 minutes; I was in her cabin

about 10 minutes. She was built in Greenport; I know that only because Capt. Baker told my father so.

I don't know when she was built. I think her hold was 8 ft. deep; I never measured it or saw it measured; I don't know how long she was; I can't say of what kind of timber her frame was; I can't say how she was fastened; I can't say how thick she was planked; her sails were old at that time; I think her sails were between two and three years old. I know she had as much as five sails; I saw them and counted them; I counted a flying jib, jib. foresail, mainsail and main-top-gallant-topsail; I counted these sails the three times I was on board of her; I counted them each of the three times I was on board of her; I can't say who was present the first time I counted the sails.

Q. How did you happen to count the sails the first time?

A. I was looking at her hull and I saw the sails, and counted them because I saw them.

138 Q. How did you come to count the sails the next time?

A. The same as I did the first. I can't remember who was present then.

Q. How did you come to count the sails the 3d time?

A. Same as the second time; the sails were all furled each time I counted them; it was between 10 and 12 when I counted the sails first time; it was between 10 and 12 o'clock when I counted them the second time; it was between 10 and 12 when I counted them the 3d time; she might have been in two days when I counted them the first time; I don't remember whether I went up every day; I might have been in her hold three times; I think that I bought a vessel in Feb., 1854; I think we bought the Kate Henry. We bought her of Harry Smith; he built her for us; we did not buy her any other way only that he built her for us. I saw Capt. Wildin about an hour ago at Oliver slip; I told him I was coming down here to give the

139 evidence; he ask me if I knew anything concerning the Jno. C. Wells. I told him I did. He said he would like for me to go down and take my affidavit. I had before that told him what I would say she was worth. If I had been going to buy the vessel I should have made more examination of her than I did. I made no examination of her for the purpose of ascertaining her value.

PETER VAN NAME.

Sworn to before me this 19th day of May, 1860.

[SEAL.] WM. D. JONES, *Notary Public.*

140

141 U. S. circuit court.

THE ANN CAROLINE, her tackle, &c., *ads.* WELLS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Walter Hudson, being sworn and examined as a witness on the part of the respondents, says: I am forty-three years old; am master

of a vessel; have been for twenty years past; of late years in the oyster business; I own interest in two vessels; I have bought and sold vessels engaged in the coasting trade, and I think I have a knowledge of the value of such vessels; in fact I know I have. I have seen the schooner John C. Wells about the 1st March, 1853; she was then lying in Nansemond river, Virginia. I went aboard of her and looked around; she was about 80 or 90 tons, as I thought, by appearance; she was worth, as I thought, at the time, from $2,500 to $2,800. I
142 saw her a few weeks after that in Oliver slip; I went aboard of her and looked around her again; I think she would have brought about the same price in February, 1854—say from $2,500 to $2,800.

Cross-examined.

I am a shipmaster in the coasting trade; of late years in the oyster trade; peaches, apples, pine wood, and such like.

I never examined the Wells with reference to buying her; I should not have been willing to have bought her without making a further examination of her; I don't know whether she was copper-fastened; I don't know what kind of timber the frame was made of; I don't know when she was built; I don't know what trade she had been engaged in; at that she had a load of oysters. I was on board of her probably an hour; business called me there. I went there to see how he was getting along with his load, as I came next, and I had business with the man that was loading him; I don't know when she was built. I own part of two vessels; both in the oyster trade. I can't
143 say that I bought or sold any vessels in Feb., 1854; I can't name any vessel that I know of being sold at that time; I don't know of any vessel being sold between March, 1853, and Feb'y, 1854, that I was interested in.

Capt. Wildin asked me to come here. He asked me in March last.

WALTER HUDSON.

Sworn to before me this 24th day of May, 1860.

[SEAL.] WM. D. JONES,
Notary Public.

144 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Alfred Corson, being sworn and examined as a witness on the reference on the part of the respondents, says: I am thirty-two years old; I am master of a vessel; I have been engaged in the seafaring business all my life; I have owned interest in vessels; I have knowledge of the value of vessels; I saw the Wells in the spring of 1853, in Virginia; she was taking in a cargo of oysters for New York; I was aboard of her and looked around; I don't recollect to have seen her afterwards. I think she was worth at that time about $2,500, and in February, 1854, if proper care had been taken of her, I think she would have brought or sold about the same price.

Cross-examined.

I am in the oyster trade; made no examination of the Wells; only happened to be at her because I was then loading. Don't know how she was constructed; nor her age; nor when she was built.

I do not own in vessels; I was enough acquainted *as* the
145 vessels to have bought a vessel on my own judgment. Capt. Wildin asked me to come here.

ALFRED D. CORSON.

Sworn to before me this 24th day of March, 1860.

[SEAL.] WM. D. JONES,
Notary Public.

Endorsed: U. S. circuit court. The Ann Caroline, &c., *ads.* William H. Wells. Dep'ns of Van Name, Hudson, Corson.

146 U. S. dist. court.

WILLIAM H. WELLS
vs.
THE SCH'R ANN CAROLINE.

In pursuance of a decretal order made in the above cause, whereby, among other things, it was referred to the undersigned, a United States commissioner, to hear and determine the matters so referred, I, Charles W. Newton, the commissioner to whom the matter was referred, do report, that I have been attended by the proctors for the respective parties, and, after taking and examining the evidence offered, do find that the damage caused by the collision named in the pleadings is as follows, viz: Value of the sch'r John C. Wells, at the time of the collision, five thousand dollars; interest on the same to the date of this my report, two thousand three hundred and sixty-two dollars and fifty cents; amounting in all to seven thousand three hundred and sixty-two dollars and fifty cents, ($7,362 50;)
147 which amount I report as the damages in this cause.

All of which is respectfully submitted.

CHA'S W. NEWTON,
U. S. Com'r.

NEW YORK, *November* 12, 1860.

Endorsed: United States district court. William H. Wells *vs.* The sch'r Ann Caroline. Commissioner's report.

GENT'N: Take notice that the report of the commissioner, in this cause, will be presented for confirmation on the 13th, at 11 a. m. Nov. 12th, '60.

Yours,
BENEDICT, BURR & BENEDICT,
Lib'l's Proct's.

To OWEN, GRAY & OWEN,
Cl'm'ts' Proct's.

Filed November 13th, 1860.

148 U. S. circuit court.

WILLIAM H. WELLS
ag'st
THE SCHOONER ANN CAROLINE, &c.

The claimants except to so much and such parts of the report of the commissioners in the above action, dated November 12, 1860, as finds—

First. That the value of the schooner John C. Wells, at the time of the collision, was five thousand dollars, whereas the commissioners should have allowed for such value a much less sum.

Second. That the libellant is entitled to interest on such value, amounting to two thousand three hundred and sixty-two dollars and fifty cents, whereas the commissioner should not have allowed any interest whatever by way of damages or otherwise.

Third. The commissioner adopted an erroneous rate of dam-
149 ages, and should not have reported damages exceeding in amount the value of the schooner Ann Caroline and freight pending.

Fourth. The commissioner erred in excluding the testimony offered by the claimants as to the value of the schooner Ann Caroline, in accordance with such rate of damages.

OWEN, GRAY & OWEN,
Cl'ts' Proct's.

Endorsed: U. S. circuit court. William H. Wells *ag'st* The schooner Ann Caroline, &c. Exceptions to commissioner's report. Owen, Gray & Owen, cl'm'ts' proct's.

Filed Nov. 16th, 1860.

150 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the 30 day of May, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

WILLIAM H. WELLS
vs.
THE SCH'R ANN CAROLINE, her tackle, &c.

This cause having been heard on the exceptions to the commissioner's report, taken by the claimants and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the aforesaid exceptions to the report of the commissioner be, and the third and fourth are hereby, allowed, and the remaining exceptions be disallowed, and that the report of the commissioner be, and the same is hereby, set aside.

And it is further ordered, that it be referred back to the
151 said commissioner to ascertain and report the damages sustained by the collision in the pleadings mentioned, upon the principles set forth in the decision rendered herein.

Endorsed: U. S. circuit court. The sch. Ann Caroline *ads.* Wm. H. Wells. Decree allowing exceptions to com'r's first report. Owen, Gray & Owen, cl'm'ts' proct'rs.

Filed May 30, 1861.

152 *Testimony on 2d reference.*

WM. H. WELLS
vs.
ANN CAROLINE. } October 10th, 1860.

Wm. H. Baker, being duly sworn, says, for libellant says: I know the sch'r Ann Caroline; have been on her; know her size, and when she was built; and also know her condition at the time of the collision. I have owned parts of vessels and know the value of vessels of this kind. The Ann Caroline was worth $7,000 the day she run down the John C. Wells.

Cross-examined.

I am not the libellant in this cause, and no relation to the libellant. I have been examined in this cause before. I was master of the John C. Wells at the time of the collision; the owners have never made any demand upon me for the collision; I am in the coasting trade; the first time I ever saw the Ann Caroline was before she run into us; on that day I boarded her; that day, on the inside of
153 Cape May, after she run us down; she had no cargo in at that time; her tonnage was about 190; carry 230. I was on board of her half an hour at that time. I have seen her since at the head of one of these piers in the city last summer. I did not see her from the time of the collision until last summer. I got on board of her at the time of the collision from our smacking vessel; all our crew got on her; it was a cold day; we got on board of her to save my life. I looked at her all around; I don't know that I looked at her with a view to her value. I took particular notice of her at the time; her sails were nearly new; should think the sails six months old; I should suppose she was about three years and a half old when she run us down; all I saw she was built of was locust, oak, and pine. I think she was built in Newark, N. J. I have owned several vessels; the Hiram, E. Brisbon, &c.; three in all; the largest was 220 tons. I own in the last one yet; I commenced to be an owner fifteen
154 years ago. I mean to say that the vessel would sell at $7,000, at auction, in market; if I had wanted one like her I would have given that for her. I examined the vessel all the time I was on board of her at the time of the collision; I did not go down into her hold; I rowed around her in a boat to look at her; I looked at her

to see what condition she was in; when she struck us I clambered up on her bob-chains; the rest of the crew jumped into the small boat belonging to our vessel, and they came alongside of the Caroline and got on to her; the capt. ordered us ashore, and then I got into the small boat, and then dropped around the Ann Caroline's stern; this was half an hour after I got on board; the capt. ordered us to go on shore; I did not think it right; it was very cold and made ice on deck all day; when I went around her I took her name; the capt. did not tell her name.

Re-direct resumed.

155 I got acquainted with her sailing qualities on the day before the collision.

Q. Would you have been willing to make an offer for the vessel from the examination you made of her?

Obj. overruled, October 12th, at 2 o'clock.

JANUARY 18th, 1862.

Mr. Benedict appears and produces John Rodgers, and offers him as a witness.

On motion of Mr. Gray, of respondent's examination, adjourned until Monday, Sept. 20th, at 11 o'clock.

SEPT. 20th.

Parties appear, and Mr. Benedict produces copies stipulations heretofore mentioned.

156 U. S. circuit court.

WILLIAM H. WELLS
vs.
THE SCH'R ANN CAROLINE.

JAN'Y 21st, 1862.

John Rodgers, being duly sworn on the part of libellants, says: I am a seafaring man, and have been such for about twenty-five years; I have went before the mast, cook, and captain; I knew the sch'r Ann Caroline; I knew her soon after she was built; I came to know her by seeing her name, and going on board of her; I went on board of her as mate first; I don't recollect when I first went on board of her as mate; I suppose she was probably two years or two years and a half old when I first went on board of her as mate; I recollect of hearing of this collision with the Wells at the time of it. It was before that I went on her as mate. I went on her as mate something like nine months as mate, I think; I don't recollect how long; I left her
157 before the collision; it might have been two years and it might have been longer, I don't remember; I saw her several times after I left her, before the collision and after the collision; after the collision I bought a share in her; I don't recollect what time I bought; I could not tell exactly how long after the collision I bought

the share in her; it might have been two years, and it might have been three years; I bought an eighth in her.

Q. What did you give for that share?

(Objected; sustained; ex'd.)

A. I got the bill of sale of my share from John Sedgwick; Capt. Wildin took my note in part pay for the vessel, and took another man's note for the rest; I afterwards sold back my share to Capt. Wildin.

Q. What was that vessel worth in Feb'y, 1854?

A. I suppose she was worth in the neighborhood of seven thousand dollars.

Q. Was she worth as much then, or more or less than when you bought?

(Objected; sustained; ex.)

158 *Cross-examined by respondent's counsel.*

Q. Have you been a seafaring man during the whole time you have mentioned?

A. Yes, sir, with the exception of some months I might have boarded on shore; I have had no other occupation.

Q. How long during that time did you act as captain?

A. I suppose I have been captain eight years during the time.

Q. When was the Ann Caroline built?

A. I don't know what year.

Q. About what year?

A. I suppose about 1851 or 1852; I don't know that I can tell.

Q. In what year did you go on board of her as mate?

A. I don't know exactly; I don't recollect.

Q. Did you have any knowledge of her before you went on board of her as mate?

A. Yes, sir; I had often seen the vessel.

Q. How often had you seen the vessel before you went on her as mate?

A. I suppose half a dozen times a year.

Q. Where did she use to run to at that time?

159 A. Part of the time she ran to Newark.

Q. Where were you at the time of the collision?

A. I believe I was coming up the beach; I was in the sch'r Wm. Wright at the time.

Q. Were you not in the Rapahanach river at the time of the collision, frozen up?

A. No, sir.

Q. How long before the collision was it that you left her?

A. I could not tell how long.

Q. Was it one, two, three, or four years?

A. It could not have been more than two years; it might have been more.

Q. After the vessel was built and before the collision, what repairs, if any, were put on her?

(Objection by Mr. Benedict, over'd; ex.)

A. I don't suppose any particular repairs were put on her, except being painted every year; that is what we generally do to a new vessel.

Q. Do you know of your own knowledge that these or any repairs were made?

A. I do not.

160 Q. Was not the share you bought in the vessel a master right, or sailing interest?

A. I bought her for that purpose. The note I gave to Capt. Wilden was not paid; I took it back when I sold the vessel; I suppose the other was paid.

Q. Did you ever own any interest in any other vessel?

A. No.

Q. Have you ever bought or sold any other interest in any other vessel?

A. No.

Q. You were formerly in the employ of the owners of the Ann Caroline, or some of them, was you not?

A. The same owners owned the William Wright when I sailed her.

Q. Did they not discharge you from their employ?

(Obj. by Mr. Benedict; overruled.)

A. Yes, sir.

Q. When was that?

(Obj. overruled; ex'd.)

A. Three years ago last fall, I think; it might have been longer; I had sold back the interest before they discharged me; I sold back three or four months before they discharged me.

Q. Did they not charge you with running them in debt?

A. They did.

161 Q. Did you not have a hostile feeling towards the owners of the Ann Caroline on account of the discharge, and the charges made against you?

(Obj. overruled; ex.)

A. I did not at that time.

Q. How long did such hostile feeling continue?

A. Not a great while.

Q. Did you not, during the summer of 1861, in or near West st., in this city, in a conversation with Capt. Wilden, now present, say to him that you had whipped the new capt. of the Ann Caroline, and that you were bound to have satisfaction out of some of the rest of them, or any words to that effect?

(Obj. overruled; ex.)

A. I might have said some such thing, and might have not. As to the new capt. I never have seen him since he went into her.

Q. Who was the capt. that took her after you left?

A. Applegate. He went mate with me in her.

Q. Have you ever had any quarrel with Applegate?

A. Not while he was master of the vessel.

Q. What was the dimensions of the vessel?

162 A. I don't remember now. She registered 161 or 162 tons. I believe she was 8 feet 9 or 10 inches in depth. I don't know her length; her sails were in very good condition the last time I saw her before the collision.

Q. Who asked you to come here as a witness?

A. I don't know, I was subpœnaed here; I have never been here before the other day as a witness.

Q. Have you had any conversation with Mr. Wells, or any person, representing the vessel in regard to this matter?

A. No, sir, except these gentlemen in the office here.

Q. Did you not have a conversation last summer with a person in regard to the value of the Caroline?

A. I don't recollect of having.

Q. Did you not have a conversation with a Mr. Yoe in regard to her value?

A. I don't remember of having—I might have had; I don't recollect any, however.

Q. Did you not tell him that the Ann Caroline was not worth $6,000 at the time of the collision, or something to that effect?

(Obj. overruled; ex'd.)

A. I don't recollect telling him any such thing.

Q. Did you ever build any vessels, or have any built

163 for you?

A. No, sir.

Q. Did you see the Ann Caroline when she was building?

A. I did not.

Q. Do you know what it would cost to build such a vessel as the Ann Caroline?

A. I do not know what it cost, then nor now.

Direct resumed.

Q. Did you ever hear Capt. Wilden or any of the owners say what it cost to build her?

(Obj. over'd; ex.)

A. I might, but I don't recollect.

Q. Did you ever hear any of the owners what she was worth?

A. No, sir.

Q. Have you known of purchases and sales of vessels by others?

A. I have of vessels I knew; I knew of the sales at the time, the price, &c., &c., and how much was given for them of vessels I knew.

U. S. circuit court.

164 THE ANN CAROLINE, &c., *ads.* WILLIAM H. WELLS. } Ref. May 20th, 1862.

John T. Grice, for claimants: I reside at Newark, N. J.; I am an invalid, and have no occupation; I used to be in the boating business

and gas business; I have bought sold vessels before 1854; I am acquainted with the value of vessels; I have owned vessels before 1854; I am acquinted with the Ann Caroline; I knew of her when she was on the stocks and since 1854; I have been on board of her almost every month previous to 1854, and when she was in port I went on board nearly every day. I knew of the collision by reputation of the men on board. It could not have been more than a month before the collision that I saw her. I am unable to say what was the condition of her sails and rigging; I can't say for a certainty.

Q. Do you recollect anything about the condition of the sails and rigging recently before the collision?

165 (Obj'n.)

A. My impression is that they were a second suit of sails; that is, she had used up one set of sails, and this was the second set, and they were nearly worn out. I don't remember anything about the rigging.

Q. What was the condition of the vessel at the same time?

(Obj'n.)

A. The condition of the vessel looked good; better than she actually was.

Q. What was the actual condition at that time?

(Obj'n.)

A. She looked smooth and good.

Q. Was or was she not sound in her timbers at that time?

(Obj'n.)

A. My impression is that she was not sound at that time.

Q. What, in your opinion, was the value of the Ann Caroline, the last time you saw her, before the collision?

A. I set the value of her at about $3,500.

Cross-examined.

I never owned any in her; I have owned vessels with Wil-

166 den & Sedgwick; I have not been engaged in business with them. I saw the Ann Caroline building; she was built in 1847 and 1848, through the winter; I never owned any in her. The collision took place in 1854; I know that year from certain circumstances; I cannot tell them now; I can't say who first told me about the collision; I last saw this vessel, it might have been in January, or it might have been in February; if she was laying in Newark, I am sure I saw her in February; I don't remember whether or not she was laying in Newark then; I don't know where she now is, nor who owns her; I can't say when I last saw her. I never made an examination of her for the purpose of estimating how much she was worth. I don't know that I sold any vessels in 1854; I did not buy any in 1854; I don't know when she got her last suit of sails before the collision. My business was transportation by river and gas-fitting; I owned vessels running between Newark and New York, and was clerk,

167 bookkeeper, and head over all on the dock; I was in that business 8 years. I went into the gas-fitting business in 1850, in Newark; I was overseer, making and selling gas-fixtures. I never

sailed in the Ann Caroline; she tonned a little over one hundred and sixty; I know it from the custom-house papers; can't say when I saw them; I saw Capt. Wilden once, with them in his hands, coming on board the Ann Caroline; I was on board; I can't say what I was doing. I am not a ship-carpenter. I have been a millwright, and know what wood is. The Ann Caroline was never insured, to my knowledge.

R-d.

My business from 1848 to 1854 was freighting and gas business; since then I have done nothing but look after my vessels; I have built in 8 or 10 vessels, and had interest in them. From 1848 to 1854 I don't think I built any vessels.

R-d.

168 I don't know of any vessels being sold in 1854.

R-d.

I was acquainted in 1854 with the value of vessels.

Samuel Nichols: I reside in Newark, N. J., and have lived there 16 years. I have been a shipmaster; I left the service 1848; I have owned interests in vessels; I am acquainted with the value of vessels, and was so in 1854. I mean that I am acquainted with the value of such vessels as I have examined; I have examined vessels; I knew the Ann Caroline from the time she was launched to the time she was sold, after the collision; I knew of the collision. I made a rule to see the Ann Caroline every time she arrived at Newark; I have often seen her before the collision; her trips were sometimes once in ten days, and sometimes longer. I always put the value of the Ann Caroline at $4,000, if her outfit, sails, &c., were in good order, and if not in good order, less. Her standing rigging I did not consider good.

169 Her external appearance before the collision was good, or had the appearance of being so. Two years afterwards, examining the vessel for the purpose of making a purchase of one-quarter, I sounded her. I took a mallet and struck against her sides, on the inside, and thought I discovered the dry rot. A vessel gets dry rotted between 2 and 4 years old, and therefore, if this vessel had dry rot in her at the time I sounded her, she must have had when the collision took place. I saw her inside of six weeks before the collision, and the next day after, as near as I can remember. I made no particular examination of the vessel on that day.

C-ex.

I was not buying or selling vessels in that year. I know of some being bought or sold in 1854. I don't know where she is now; she went east, I believe.

Q. When you say that you put the value of the Ann Caroline at $4,000, what do you mean?

A. I mean on account of her age, being about six years old,
170 and her depreciation; I mean that was what a man ought to give, who wanted a vessel like her.

David Fox: I reside at Jersey City; formerly lived at Newark, and left there in 1855 or '56. My business is the tug business; I own 2 steamboats; I tend to the out-door business of the Morris Canal Co., in Jersey City. I have owned, bought, and sold interests in vessels, and I consider myself a little acquainted with the value of vessels. I think I was so acquainted in 1854. I knew the Ann Caroline from the time she was built to the time she was sold, which was since the collision. Before 1854 I saw her almost every trip she made; I have been on board of her; I knew of the collision. If the vessel lay at Newark during the winter, I saw her nearly every day, and if she lay there I have no doubt I saw her on the last trip before collision. I should judge the value of the Ann Caroline in
171 Feb'y, 1854, by the value of one I owned; according to that, I should think she was worth from $3,000 to $4,000 to sell her at auction.

Ex'd.

I only estimate by the value of one I owned once, of or about the same age and size. I did not examine the Ann Caroline. I am a stream-lay-man now. I don't know where the Ann Caroline is now.

7 June, at *at* 1 o'c.

172 Circuit court.—U. S. dist. court.

WILLIAM H. WELLS
vs.
THE SCH'R ANN CAROLINE.

JULY 8th, 1862.

Smith Wilden, being duly sworn on the part of claimants, says: I am a seafaring man; have been in that business about 26 years, off and on; I have owned some fourteen or fifteen vessels, and bought and sold them; I am well acquainted with the value of vessels ranging from one to three hundred tons; I knew the Ann Caroline; I contracted for and built her; I built her in the years 1847 and 1848, at North Bellville, N. J.; I knew her up to the year 1858, when the owners sold her; I was her commander the first seven years after she was built; I was in command of her at the time of the collision on the 11th Feb'y, 1854; I owned a quarter interest in her at the time of the collision; it was the sailing interest; her sails, at about
173 the time of the collision, were about worn out—that is, her second suit; I suppose her sails, at the time of the collision, were worth about $100; her rigging, both standing and running, was bad at the time of the collision; her rigging was bad that we were obliged to replace it with new after the collision; some of it was repaired and made good as new, and portion was entirely replaced by new; the condition of the vessel, just before the collision, was bad; she was taken with the dry rot; we discovered the dry rot

a year before the collision took place; a vessel with the dry rot all over her would be worthless; the frame of the vessel was bad with the dry rot; a person would not be able to discover the dry rot unless they examined her by boring or sounding her; her general outside appearance was very good. The Ann Caroline was worth, at the time of the collision, twenty-six hundred dollars; that was all she was worth; I include everything, sails, &c., in this sum; if
174 *if* it had not been for the dry rot, and with new sails, she would have been worth four thousand dollars. I sold out my interest in the Ann Caroline in the month of April, 1855. I have no interest in her now, nor this suit. I know John Rogers, the person who was examined by the libellants in this suit; he never sold or conveyed to me any interest in the Ann Caroline.

Cross-examination, by R. Benedict.

I know John Sedgwick; I had a quarter interest in the Caroline, and sold it to John Sedgwick in 1855. I repaired the Ann Caroline after the collision; she was repaired at Newark; I put a new ceiling into her, new sails, and stripped her of all her rigging, repaired it, and put new when it needed it; the frame had the dry rot, and also the ceiling; we put some new timber into her, such as we condemned; I can't say how many; I should think some forty or fifty new timbers; the amount of repairs I put on her at that time was some 25 or $2,600; the carpenter work was put in in June or July after
175 the collision, and the sails just after the collision; the rigging was put on at the time of the carpenter work; I think I put a new mast in her, but not before April, 1855; no repairs, besides the above, were put on her before April, 1855; I sold my interest to Sedgwick for a great deal more than it was worth.

Q. What did you sell it for?

(Obj. to by claimant's counsel. Obj. sustained. Ex'd.)

I have understood that Rogers conveyed his interest to Mr. Sedgwick. I think there was a note endorsed over to me that he gave to Sedgwick; Sedgwick turned it over to me. A man by the name Moore done the repairs at Newark; I think he is dead now. I signed the bond on the vessel the first time she was bonded.

Q. What did this vessel cost to build?

(Obj. overruled. Ex'd.)

A. She cost seven thousand five hundred dollars; she was built in 1847 or 1848. I think she made her first trip in October,
176 1848. I think she had only the usual repairs put on her up to the time of the collision, such as were necessary to keep her in good seaworthy condition; at the time of the collision she was chartered to go after a cargo of corn; it requires a tight vessel to carry corn or any other cargo; this vessel leaked some; she did not leak sufficient to stop her from carrying a cargo of corn. I discovered the dry rot a year before the collision, in the hold; I discovered it by boring into her; I did not take any measures to prevent it; I put it off; she was a common sailer; I owned in her from the time she was built down to 1855.

Direct resumed by claimant's counsel.

The vessel had run mostly to Virginia after she was built; vessels will depreciate, in the coasting trade, about twelve or thirteen per cent. a year—that is, if they are not salted; if she is salted it will be about ten per cent.; the Ann Caroline was not salted; this
177 thirteen per cent. includes the deterioration from the dry rot as well as the business of coasting. The deterioration of the Ann Caroline was more than thirteen per cent., because she took the dry rot when about four years old. The note was endorsed over to me by Sedgwick in some transaction of business between us, not any way connected with the sale of the vessel.

Re-cross.

I never had Rogers's note; I had a note of a man by the name of Grice; I discovered this dry rot when she was five years old; we supposed she took it at about four years; I have a sister who owns a quarter interest in her, and I have acted as her agent.

July 30th, 1862.—Parties appear, and Mr. Benedict, counsel for libellants, offers in evidence the consent to bond, fixing the value of the Ann Caroline at $5,000, and also the bond given on the discharge of the vessel in the district court; (the bond is now on file, a copy to be produced.)

(Objected to by respondents' counsel; overruled. Ex'd.)

178 The collision took place Feb'y 11th, 1854. The vessel was bonded in August, 1854.

Baldwin A. Fox, for libellant, says: I am engaged in the commission business in this city.

Q. Do you know of the sch'r Ann Caroline bringing a cargo of corn from Delaware to New York; if so, when was it?

A. I do; she arrived in New York March 3d, 1854; we engaged her here to go there and bring it to this city; we engaged her, I should think, about a month previous to March 3d; we paid her $513 on that voyage.

Cross-ex.

I think there was no charter-party—a mere verbal agreement; the cargo came in bulk, consisting of about eighty-two hundred bushels; the agreement was to pay 6 cents per bushel for part, and 6½ for the part. It is my impression that the collision took place on this voyage on her outward trip, when she went down light.

Libellant's counsel offers to prove the present value of the
179 vessel to be $5,000, and that she has received no more than the ordinary repairs since the collision.

(Objected to. Obj. sustained. Ex.)

Marcus Hunter, for libellant, says: I am a commission merchant in this city; own vessels. The usual allowance for depreciation and wear and tear of vessels engaged in the coasting trade is ten per

cent. per annum; this rate is universally assented to and allowed upon vessels having the ordinary repairs.

Cross-ex.

This rule may be changed by the peculiar facts in each case, but is what is universally allowed between merchants as the depreciation of vessel property; I should think there would be no difference whether a vessel was salted or not; if a vessel had the dry rot she would be depreciated much more than ten per cent. The only way to detect the dry rot is by boring; a vessel may be largely in-
180 fected with the dry rot, which would make her hull worth little or nothing; the amount of dry rot would regulate the depreciation.

Q. If a vessel, to outside appearance, is worth $5,000, and her frame was afterwards found to be badly infected with dry rot, and also her ceilings, how much would that diminish the value of the vessel?

A. You can't tell; it is a mere matter of speculation.

Adj. to Sept. 3d, at 2 o'c.

U. S. circuit court.

181 WILLIAM H. WELLS
vs.
THE SCHOONER ANN CAROLINE, &c.

Thomas Cassidy, being duly sworn for the claimants, deposes and says: I am a seafaring man, and have been for about 14 years; I have owned an interest of ¼ in one vessel, but do not now. I have seen vessels sold and bought several times in the last 14 years; I sold my interest in the vessel I owned, about three years ago, and bought that interest in 1852.

I was acquainted with the Ann Caroline from Feb'y 5, 1854, the voyage in which the collision took place. Her sails at that time were worn out, and were not worth anything of any consequence, except for old junk; her running and standing rigging were also worn out. The vessel was rotten in the ceiling. While I was in, they took out some of the ceiling, which was rotten by dry rot; I don't know whether her timbers was rotten. We also had to nail canvas
182 over some parts of the ceiling where it had rotted, to keep the stuff from going down and choking up the pumps. The vessel leaked so that they had to pump her twice each watch; she could still carry cargo, however. Her paint was old, and had scaled off in spots.

Q. What, in your opinion, was the Ann Caroline worth at the time of the collision?

(Obj. to; decision reserved.)

A. $2,800. I think she was not worth more than that sum.

I was on board at the time of the collision; I saw Capt. Baker, the capt. of the Wells, come on board the Ann Caroline right after the collision. He did not remain on board over five minutes; he walked

up to the main rigging where his boat was; he jumped on board while the vessels were together; I did not see him look around any.

Q. Was he in your sight all the time while he was in the vessel?

Ans. He was.

Q. Did he, while on board the vessel, make any examination of the Ann Caroline?

(Obj. to; decision reserved.)

Ans. No sir.

183 *Cross-examined.*

The collision was on Feb'y 11. I left the vessel in May. I went on board her Feb'y 5; never sailed in her after I left her; I went in another employ then; never saw her since I left her; I knew her three or four years before I went aboard of her; I mean I had seen her coming up and down the river; that is all. At the time of the collision she was bound to Smyrna creek, Del.; she was in ballast; she went there for a cargo of corn; I don't know who she got the cargo from; she brought it to the Atlantic dock; I don't know to whom; I don't know whom it was brought for; I don't know whether she was under charter.

A suit of sails generally lasts three years; this suit of sails had been on her three years. Before I left I helped bend the new suit of sails on. Some of the corn that she brought, down along the keel and ceiling, was wet. They took out a piece of the ceiling that was rotten, about eight feet long; they did not take out any other piece, but nailed canvas over the holes; nailed canvas over four or five places. It requires a tight vessel to carry corn. I owned in the sloop

184 Palmyra; she was 60 tons; never owned in any other vessel. No one told me the Ann Caroline was worth $2,800. I think vessel property was low then; I don't know how much she cost when she was built; I have not talked with her owners about her value; I never talked with Wildin about her value; I never talked with Mr. Gray, nor with Mr. Sedgwick, here present, about her value, no more than I told Mr. Gray awhile ago, when he asked me; I mean on my direct examination; no one had told me what Wildin testified her value was. I was standing on the deck while Capt. Baker was on the Ann Caroline, doing nothing but talking to the men in the boat. I was splicing a rope at the time of the collision, holding it for the mate to splice it; Capt. Baker jumped aboard right after the collision. I am now in the employ of the Newark Transportation Co. I was hand on board the Ann Caroline; I don't know who furnished the new suit of sails for her.

Re-direct.

On her deck there were places about the seams where she was rotten, and we had to white lead it and caulk it; there had been pieces taken out and put in.

185 THOMAS CASSIDY.

Sworn before me this 11th July, 1862.

[L. S.] WM. D. JONES, *Notary Public*, 74 *Wall st.*

We consent that the above deposition be read in evidence, subject to all legal objections and exceptions, as to the competency and relevancy of the testimony.

BENEDICT, BURR & BENEDICT,
Lib'ts' Proctors.

186 U. S. district court.

WILLIAM H. WELLS
ag'st
SCH'R ANN CAROLINE, &c.

Sept. 20, 1862.—Reference adj. to Sept. 20, 1 o'c. Mr. Benedict objecting.

Irvin P. Rogers, being duly sworn on the part of respondent ——: I reside at Newark, New Jersey; I am a seafaring man in the capacity of master; prior to Feb'y, 1854, I owned interest in some 8 or 9 vessels; I have had vessels built, and bought —— sold vessels prior to that time; I was acquainted with the Ann Caroline prior to Feb'y, 1854, from the time the keel was laid; I have been on board of her, was on board of her prior to 1854, and sometimes were on board of her half a dozen times a day, and sometimes three times a month; I was on board of her on the voyage before she went out, just before the collision; I was on her two or three days before she started; I
187 was not on her on the voyage; I was very well acquainted with her condition at that time; the condition of her sales were bad; I should consider them only worth what they would bring as old junk, probably two cents and a half a pound; her standing rigging was in a bad condition; it had been put on her too small, and was very much stretched down; the vessel was rotten at the time; on examining her I could not tell how much she was rotten. I went on board of the vessel and saw some ceiling cut out—some six feet long; saw them repairing her ceiling to keep the grain from going between her timbers; to what extent she was rotten I could not tell; I should think that the value was worth, in Feb'y before the collision, from twenty-eight hundred to thirty-two hundred dollars; I should judge that was her full value; I think ten per cent. would be a fair allowance for the wear and tear of a vessel. I am a brother of John Rogers, the person examined for libellants before the comm'r; I was on board the Ann Caroline, as a general , think, every time she came into Newark.

Cross-ex'd by M. R. Benedict.

I did not own anything in her. I followed the water dur-
188 ing the time I have mentioned above, and still follow the water. I was in Newark when the Ann Caroline was there, and, also, she was there when I was not. The reason I came to be on board the Ann Caroline, was because I was very intimate with Capt. Wildin. She was built in 1847. The estimate I now put on her is one that I put on her a month after the collision. I was thinking

of buying an interest in her, but did not; we did not agree on the price; I thought the price put on her was too much, but remember what it was; she was chartered for a load of grain on the voyage of the collision. The general calculation is, that it takes a good vessel to carry grain—a tight vessel. I should think a suit of sails would cost for her, at that time, from 6 to $700. When I talked of purchasing the vessel, she had a new foresail on; I think the next fall they put on a new mainsail jib, after the collision. I did not step into the vessel's hold when I saw the rotten ceiling—that was all I saw; I merely went on to her deck. This was in July or August before the collision; she was overhauling in Newark at the time.

Re-direct.

189 I don't know that the Ann Caroline leaked before the collision. The price asked by the owner was $3,000; this was three months after the collision. The price I offered to pay was $2,800.

Testimony closed Wednesday, 24th, at 2 o'c.

190 U. S. circuit court.

WILLIAM H. WELLS
against
THE SCH'R ANN CAROLINE, her tackle, &c.

Affidavit of service.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Charles H. Jones, of the city and county of New York, being duly sworn, doth depose and say: That he did on the 10th day of October, in the year one thousand eight hundred and sixty-two, serve Owen, Gray and Owen, esq'rs, cl'm't's proctors in the above-entitled action, with a copy commissioner's report, of which the annexed is the original, by delivering the same to E. H. Owen, personally, at his office, No. 72 Wall st., New York city.

CHA'S H. JONES.

Sworn to before me this 10th day of October, 1862.

[L. S.] WM. D. JONES,
Notary Public.

191 U. S. circuit court for the southern district of New York.

WILLIAM H. WELLS
vs.
THE SCH'R ANN CAROLINE.

In pursuance of an order of this court, bearing date the 3d day of June, 1861, whereby this cause was referred back to the commissioner,

I, Charles W. Newton, United States commissioner for the southern district of New York, to whom the within was referred, do

report that I have been attended by the proctors for the respective parties, and after taking and examining the testimony offered by them respectively, do find:

First. That the sch'r John C. Wells was worth, on the 4th day of Feb'y, 1854, the date of the collision mentioned in the pleadings in this cause, the sum of five thousand dollars, and that by reason of the said collision she was an entire loss to the libellants in this cause.

Second. That the sch'r Ann Caroline, her tackle, &c., was, on the said 11th day of Feb'y, 1854, worth the sum of thirty-five hundred dollars.

192 Third. That the freight then pending on cargo of the Ann Caroline, at the date of the collision, amounted to the sum of five hundred and thirteen dollars.

Fourth. That the interest on the freight of the Ann Caroline, then pending, together with the interest on her value from the day of the collision to the date hereof, amounts to the sum of two thousand four hundred and thirty-one dollars and forty-three cents. I do, therefore, report I find, in accordance with the decision of the court upon the exceptions to my former report, that the amount of the loss and damage sustained (for which the libellants are entitled to recover in this action) to be the value of the Ann Caroline, and the freight on her cargo then pending at the time of the collision, together, with interest on the same from the date of said collision to the date of this my report, amounting, in the aggregate, to the sum six thousand four hundred and forty-four dollars and forty-three cents which amount I report as due the libellants in this cause at the date of this my report.

Dated October 7, 1862.

193 All of which is respectfully submitted.

CHA'S W. NEWTON,
U. S. Comm'r.

Endorsed: U. S. circuit court. William H. Wells *vs.* The sch'r Ann Caroline, her tackle, &c. Commissioner's report.

Filed Oct. 18, 1862.

194 U. S. circuit court.

WILLIAM H. WELLS
vs.
THE SCH'R ANN CAROLINE.

The libellant excepts to the commissioner's report in the cause, because—

First. That he has not found that the libellant is entitled to the value of the schooner John C. Wells, and interest thereon, from 11th of February, 1854, the date of collision.

Second. That he has reported that the John C. Wells was at the time of the collision worth only the sum of $5,000, whereas the weight of testimony shows that she was worth more than that sum.

Third. He has not found that the libellant is entitled to interest

on the value of the schooner John C. Wells, since 11th of February, 1854, the date of the collision, but has only allowed interest on the value of the Ann Caroline, and on the freight of the Ann Caroline then pending.

195 Fourth. He has found that the schooner Ann Caroline was, on the 11th day of February, 1854, worth only thirty-five hundred dollars, whereas the evidence shows that she was worth a much larger sum.

Fifth. That he has not found that the value of the Ann Caroline was the amount of the stipulations for value as fixed by the amount for boat, to wit, the sum of $5,000.

Sixth. He has not found that the value of the sch'r John C. Wells was more than five thousand dollars on the 11th of Feb'y, 1854; whereas the evidence shows that she was worth much more than that sum; and he should also have found that she was worth much more than that sum, together with interest thereon.

Seventh. He has reported the damages of the libellant only $6,444 43, when the evidence shows that the damages were a much larger sum.

BENEDICT, BURR & BENEDICT,
Lib'l't's Proct's.

New York, Oct. 15, 1862.

Endorsed: U. S. circuit court. William H. Wells *vs.* Sch'r
196 Ann Caroline. Exceptions to commissioner's report. Benedict, Burr & Benedict, lib'lt's proctors.

Filed Oct. 16, 1862.

U. S. circuit court.

WILLIAM H. WELLS
vs.
THE SCH'R ANN CAROLINE, her tackle, &c., John Sedgwick and al., claimants.

The claimants in the above entitled action except to so much, and such parts, of the report of the commissioner therein, dated October 7th, 1862, for the following reasons:

First. That the commissioner has erroneously reported that the John C. Wells was worth, at the time of the collision, the sum of $5,000; whereas, the weight of testimony shows that she was
197 not worth that sum.

Second. That the commissioner has erroneously reported that the Ann Caroline, at the time of the collision, was worth $3,500; whereas, the weight of testimony shows that she was not worth that sum.

Third. That the commissioner has erroneously reported that the value of the freight of the Ann Caroline, pending at the time of collision, was $500; whereas, by the testimony it was not of that value.

Fourth. That the commissioner has erroneously reported and allowed interest upon the value of the Ann Caroline, and of the freight, so found by him.

Fifth. That the commissioner has erroneously reported the damages of the libellant to be $6,444 43; whereas, he should have reported the same at a much less sum.

OWEN, GRAY & OWEN,
Claim'ts' Proc'rs.

New York, October 14, 1862.

Endorsed: U. S. circuit court. William H. Wells *vs.* Sch'r
198 Ann Caroline. Exceptions to commissioner's report. Owen, Gray & Owen, cl'm'ts' proc'rs.

Filed Oct. 14, 1862.

Decree.

U. S. circuit court.

WILLIAM H. WELLS
vs.
THE SCH'R ANN CAROLINE, &c.

This cause coming on to be heard upon the exceptions, and having been argued by the advocates for the respective parties, and due deliberation having been had, it is now ordered, adjudged, and decreed, that the exceptions taken on the part of the libellant, as well as those on the part of the claimant, be overruled, and the report of the commissioner, made herein on the 7th day of October, 1862, be in all things confirmed.

And it is further ordered, that the libellants recover herein against the schooner Ann Caroline and John Sedgwick, Leonard
199 Church, and Martha Beaston, claimants, the sum of six thousand four hundred and forty-four dollars and forty-three cents, with interest thereon from the 7th day of October, 1862, being the sum of twenty-six dollars and thirty-one cents, the date of the commissioner's report herein, amounting in all to the sum of six thousand four hundred and seventy $\frac{74}{100}$ dollars, together with the sum of seven hundred and thirty-one $\frac{17}{100}$ dollars, their costs so taxed, amounting in all to the sum of seven thousand two hundred and two $\frac{51}{100}$ dollars.

And on like motion, it is further ordered, that a summary judgment be, and the same is, hereby entered for the amount aforesaid, in favor of William H. Wells, libellant, against Daniel C. Higgins and Elsey S. Powell, the stipulators herein.

And on like motion, it is further ordered, that unless an appeal be taken herein within the time limited and prescribed by the rules and practice of this court, that execution issue against the said John Sedgwick, Leonard Church, Martha Benston, Daniel C. Higgins, and Elsey S. Powell, for the amount decreed herein.

200 (Sign'd) S. NELSON.

Endorsed: U. S. circuit court. William H. Wells *vs.* The sch'r Ann Caroline, &c. Co. decree. Benedict, Burr & Benedict, lib'l't's proctors, 74 Wall st.

201 U. S. Supreme Court.

WILLIAM H. WELLS
ag'st
THE SCH'R ANN CAROLINE, her tackle, &c., John Sedgwick, Leonard Church, Martha Beaston, cl'm'ts and appellants.

To the honorable the Supreme Court of the United States of America:

The petition of appeal of John Sedgwick, Leonard Church, and Martha Beaston, claimants and appellants, respectfully showeth:

That heretofore, and on or about the twenty-fourth day of February, 1854, William H. Wells, the libellant above named, exhibited his libel in the district court of the United States for the southern district of New York, against the schooner Ann Caroline, her tackle, apparel and furniture, and against all persons intervening for their interest therein, claiming over fifty dollars, and praying, among
202 other things, that the said schooner might be condemned and sold, to pay the demand of the said libellant, and his costs, in the said libel mentioned.

That process thereupon was duly issued against the said schooner, and on or about the 21st day of August, 1854, your petitioners appeared in the said district court and claimed the said vessel; and afterwards and on or about the sixth day of December, 1854, filed theiranswer, taking issue on the said libel.

That afterwards, and on the sixth day of March, 1846, the cause was duly heard in the said district court by a decree thereof, whereby the said adjudged and decreed that the said libel be dismissed, with costs.

That the said William H. Wells thereupon duly prosecuted his appeal from the said decree to the circuit court of the United
203 States for the southern district of New York, and the same was thereafter duly heard in the said court; and that thereafter the said court did order, adjudge, and decree, that the said decree of the district court should be reversed, with costs.

And your petitioners respectfully insist that the said decree of the circuit court is erroneous, and they therefore appeal from the said decree, and from each and every part thereof, and pray that the Supreme Court of the United States may proceed to hear the said cause anew on new allegations and proofs, and to reverse and annul the said decree of the circuit court, and to restore to your petitioners all the rights which they have lost by reason of the said decree.

Dated New York, Nov. 24, 1862.

OWEN, GRAY & OWEN,
for Cl'm'ts and App'l'nts.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

204 B. J. McCafferty, being duly sworn, says: that he did, on the 24th day of November, 1862, serve a copy of the foregoing petition of appeal upon Benedict, Burr & Benedict, esqrs., proc-

tors for William H. Wells, the libellant in this action, by delivering such copy to, and leaving the same with, said attorneys, at their office, No. 74 Wall st., New York.

B. J. McCAFFERTY.

Sworn to before me Nov. 24, 1862.

JOS. C. HARRIOLT,
Notary Public, 70 *Wall st.*

Endorsed: William H. Wells *ag'st* The sch'r Ann Caroline, &c. Petition of appeal. Owen, Gray & Owen, app'l'ts' proctors.

Due service of a copy of the within appeal is hereby admitted. Nov. 24, '62.

BENEDICT, BURR & BENEDICT,
Lib'l't's Proctors.

Filed Nov. 24, 1862.

205 Circuit court of the United States for the southern district of New York.

WILLIAM H. WELLS, libellant,
vs.
THE SCHOONER ANN CAROLINE, her tackle, &c., JOHN SEDGWICK, LEONARD CHURCH, and MARTHA BEASTON, claimants.

Know all men by these presents that we, David Cox, of Jersey City, in the State of New Jersey, and Elzey S. Powell, of Brooklyn, in the State of New York, are held and firmly bound unto the above-named William H. Wells in the sum of fourteen thousand four hundred dollars, lawful money of the United States of America, to be paid to the said William H. Wells, his executors, administrators, or assigns; for which payment, well and truly to be made, we
206 bind ourselves, and each of our heirs, executors, and administrators, jointly and severally, firmly, by these presents. Sealed with our seals, and dated the twentieth day of November, in the year of our Lord one thousand eight hundred and sixty-two.

Whereas the above-named claimants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named claimants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

JOHN SEDGWICK. [SEAL.]
207 DAVID COX. [SEAL.]
E. S. POWELL. [SEAL.]

UNITED STATES OF AMERICA,
Southern District of New York, ss:

David Cox and Elzey S. Powell, the above-named obligors, being duly sworn, deposes and say, and each for himself saith, that he is worth the sum of fourteen thousand four hundred dollars over and above all his just debts and liabilities.

DAVID COX.
E. S. POWELL.

Subscribed and sworn to this 20 day of Nov'r, 1862, before me.

AVERY T. BROWN,
[L. S.] *Notary Public in and for the County of New York.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 20 day of Nov'r, A. D. 1862, before me personally appeared John Sedgwick, David Cox, and Elzey S. Powell, to
208 me known to be the persons described in and who executed the foregoing bond, and acknowledged that they executed the same.

AVERY T. BROWN,
[L. S.] *Notary Public in and for the County of New York.*

Endorsed: U. S. circuit court, S. D. of N. Y. William H. Wells, lib'nt, *vs.* The sch'r Ann Caroline, her tackle, &c., John Sedgwick *et al.* cl'm'ts. Bond on appeal. Nov. 24, 1862.

Approved. S. NELSON.

Filed Nov. 24, 1862.

209 By the honorable Samuel Nelson, judge of the circuit court of the United States for the southern district of New York, in the second circuit.

To William H. Wells:

Whereas John Sedgwick, Martha Beaston, and Leonard Church have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, in a certain action wherein you were libellant, and the schooner Ann Caroline and the said John Sedgwick, Leonard Church, and Martha Beaston were claimants, which said decree was in your favor; and whereas they have given the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

210 Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, this twenty fourth day of November, in the year of our Lord 1862, and of the independence of the United States the eighty-seventh.

S. NELSON, *Judge.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

B. J. McCafferty, being sworn, says, that he did, on the 24th day of November, 1862, serve a copy of the foregoing citation upon Benedict, Burr & Benedict, proctors for William H. Wells, the libellant in this action, by delivering a copy of such citation to, and leaving the same with said attorneys, sat their office, No. 74 Wall st., New York.

B. J. McCAFFERTY.

Sworn to before me Nov'r 24, 1862.

JOS. C. HARRIOLT,
Notary Public, 70 *Wall st.*

211 Endorsed: Supreme Court. William H. Wells *ag'st* The schooner Ann Caroline, &c. Citation. Owen, Gray & Owen, app'l't's proct'rs.

Due and personal service of the within citation on the libellant is hereby admitted.
Nov. 24, '62.

BENEDICT, BURR & BENEDICT,
Lib'l't's Proctors.

Filed Nov'r 24, '62.

212 U. S. circuit court for the southern district of New York, in the second circuit.

WILLIAM H. WELLS, libellant and appellant,
vs.
THE SCHOONER ANN CAROLINE, her tackle, &c., JOHN SEDGWICK, LEONARD CHURCH, and MARTHA BEASTON, claimants and appellees.

To the honorable the Supreme Court of the United States:

The appeal of the above-named William H. Wells, libellant and appellant, respectfully shows, that on or about the twenty-fourth day of February, 1854, the above-named libellant filed his libel in the district court of the United States for the southern district of New York, against the schooner Ann Caroline, her tackle, &c., in a cause, civil and maritime, for the recovery of damages alleged to have been sustained by him to the schooner John C. Wells and her cargo,
213 by collision with the schooner Ann Caroline, and that the said schooner Ann Caroline was arrested upon process issued upon said libel, and was discharged upon the claimants filing their claim and entering into stipulations; and the claimants thereupon filed their answer to said libel, and such proceedings were had in said cause, that on the sixth day of March, 1856, a final decree was made and pronounced therein by the said district court, wherein it was decreed that the said libel of the libellant be dismissed with costs.

That thereafter the libellant and appellant duly appealed from the

said decree to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew, and such proceedings were had in the said circuit court, that thereafter the said cir-
214 cuit court made a decree reversing the decree of the said district court, and referring it to a commission to ascertain and compute and report the amount of damages sustained by the libellant herein.

That thereafter the commissioner reported as due the libellant the sum of seven thousand three hundred and sixty-two dollars, being the value of the appellant's said vessel and interest; and exceptions being taken to said report by the claimants, such proceedings were thereupon had, that on or about the third day of June, 1861, the court decreed that the libellant was not entitled to recover the value of his said vessel.

That such proceedings were thereupon had, that on or about the 7th day of October, 1862, the said commissioner reported the value of the schooner Ann Caroline as thirty-five hundred dollars, and the John C. Wells five thousand dollars, and the freight on cargo
215 of the Ann Caroline as five hundred and thirteen dollars, and the interest on the freight of the Ann Caroline, and on her value as twenty-four hundred and thirty-one dollars and forty-three cents, and as due the libellant the sum of $6,444 43, being the value of the schooner Ann Caroline and the freight on her cargo then pending at the time of the collision, and interest thereon; and that the damages sustained by the libellant were only the sum of six thousand four hundred and forty-four dollars and forty-three cents.

That thereafter the libellant duly excepted to said report of the commissioner, on the ground that the libellant was entitled to recover the value of his said schooner John C. Wells, together with interest from the date of the collision, and because the commissioner reported that the schooner Ann Caroline was worth only thir-
216 ty-five hundred dollars; and thereafter the said exceptions came on to be heard before the judge of the circuit court, and the same overruled and a final decree made on the 17th day of November, 1862, whereby it was decreed that the libellant and appellant recover against the said schooner Ann Caroline, her tackle, &c., for only the value of the schooner Ann Caroline, with her freight then pending, with interest; which said decree of the said circuit court is, as this libellant is advised, erroneous, as the said libellant and appellant is entitled to recover the value of the schooner John C. Wells at the time of the said collision, and interest thereon from the said date, which would amount to a much larger sum, to wit, to the sum of five thousand dollars, and interest, as reported by the said commissioner.

Wherefore this libellant and appellant appeals from so much
217 of the said decree as disallows the value of the schooner John C. Wells, and interest thereon, but only allows the value of the Ann Caroline and interest, and the freight thereof and the interest, to the Supreme Court of the United States, and respectfully prays

that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States, without delay, and that the said Supreme Court would proceed to hear the said cause anew upon said exceptions taken by the libellant, and that the said decree of the circuit court be so far reversed as to allow the libellant and appellant the value of the schooner John C. Wells at the time of the said collision, and interest thereon from that date, together with costs, or such other decree made as to the said Supreme Court shall seem just.

BENEDICT, BURR & BENEDICT.
Proctors for App'l'nts.

218 Endorsed: U. S. circuit court. William H. Wells *vs.* Sch'r Ann Caroline, &c. Appeal. Benedict, Burr & Benedict, app'l'nt's proctors.

Due service of a copy of the within appeal is hereby admitted. Nov. 29, '62.

OWEN, GRAY & OWEN,
Atty's for Cl'm'ts.

Filed Nov. 28, 1862.

219 By the honorable Samuel Nelson, judge of the circuit court of the United States for the southern district of New York, in the second circuit.

To John Sedgwick, Leonard Church, and Martha Beatson:

Whereas William H. Wells has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of the said Wells against the schooner Ann Caroline, her tackle, &c.:

You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the 27th day of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 26th day of November, 1862, and in the independence of the United States the
220 eighty-seventh.

S. NELSON.

Endorsed: U. S. circuit court. William H. Wells *vs.* The sch'r Ann Caroline, &c. Citation. Benedict, Burr & Benedict, app'l'nt's proctors, 74 Wall st.

Due and personal service of the within citation is hereby admitted. Nov. 26, '62.

OWEN, GRAY & OWEN,
Proctors for Cl'm'ts.

Filed January 26, 1863.

Supreme Court of the United States. 1

WILLIAM H. WELLS,
vs.
THE SCHR. ANN CAROLINE, &C.
SEDGWICK AND OTHERS,
Claimants.

Abstract, points & brief for Libellants.
E. C. BENEDICT.
Advocate.

PRELIMINARY STATEMENT. 2

ON the 11th February, 1854, at about one o'clock P.M., a fleet of Schooners lying at anchor opposite the Tavern houses at Cape May got under way to go up the Delaware Bay. The Ann Caroline, perfectly light, was farthest to the Eastward, and the John C. Wells, deeply laden, farthest to the West, say a mile from the Ann Caroline. The wind was N.N.W., a full sail breeze, and the tide was the last of the ebb. The vessels had to beat close hauled. At the beginning of the flood they were at the lighthouse, and after an hour, about three P.M., eight vessels were near the lower 3
end of Crow Shoal, a shoal a little distance from, and nearly parallel to the shore and opposite the Steamboat Landing, all bound up the Cape May Channel, between Crow Shoal and the Jersey Shore.

Seven of them, the John Tows, the Triumph, the John C. Wells, the Ann Caroline, the James H. Deputy, the Cornelia, and the Mary E. Matthews were on the larboard tack—the long leg toward the Jersey shore; and one, the John Harris, on the starboard tack—the short leg to the Southward and

4 Westward. Of the vessels on the larboard tack, the Wells was farthest to the Westward and to windward, and too near the shoal to go about with safety; and the Ann Caroline farthest to Eastward and to leeward; half or two-thirds across, towards the Jersey shore, say half a mile distant from the Wells. The Ann Caroline, some time and a considerable distance before running out her tack, suddenly came about, and on a course which would have carried her under the stern of the Wells, ran under full sail at the rate of five or six miles an hour across the bows of the Deputy,
5 the Cornelia, and the Matthews, and at the distance of 20 to 40 rods put her helm hard down, which changed her course so that she ran into the Wells, striking her about ten feet forward of her stern, cutting her down into her cabin, sinking her instantly in four or five fathoms of water.

For this collision the action is brought.

This action was commenced by the libellant William
6 H. Wells, owner of the Schooner John C. Wells, by filing a libel in the District Court for the Southern District of New York, in running against the Schooner Ann Caroline, on the 24th day of February, 1854. (fol. 2.)

The vessel was not arrested till the 19th day of August, (fol. 9.) on a *pluries* writ. On the 21st the vessel was valued, by consent, at $5,000, and delivered on stipulation. The claimants, Smith Wilden and others, owners of the Ann Caroline, put in their answer December 6th, 1854. (Fol. 11.)

7 The cause was heard in the District Court October 17th, December 20th and 21st, 1855, January 2d, 3d and 4th, 1856. (fol. 21—104.)

The District Court, Judge Betts, made a decree dismissing the libel March 6th, 1856. (fol. 105.)

The libellant appealed to the Circuit Court. (fol. 109.)

In the Circuit Court the cause was heard on the testimony taken in the District Court, and on further proofs taken in the Circuit Court. (fol. 113—122.)

The Circuit Court, Judge Nelson, reversed the decree of

the District Court, and referred it to a commissioner to ascertain and report the damages. (fol. 123.) 8

See the opinion of the Circuit Judge in the appendix to this brief.

Testimony was taken on the reference (fol. 125—145.)

The Commissioner reported the amount of damages, $7,362 50. (fol. 146.) 9

The Report was excepted to and was set aside by the Court and referred back. (fol. 150, 151.)

See the opinion of the Circuit Judge in the appendix.

The Commissioner reported damages $6,444$\frac{43}{100}$ on the 7th October, 1862. (fol. 191.)

To this report the libellant excepted (fol. 194) and also the Claimant. (fol. 196.) 10

The Court overruled the exceptions and confirmed the report. (fol. 199.)

The final decree was entered thereon. (fol. 198.)

From this decree the claimants appealed November 24, 1862. Vid appeal. (fol. 201.)

The libellants also appealed. Vid appeal. (fol. 212.)

The two cardinal questions are:

1st. Which party is responsible for the collision? Each party insisting affirmatively that the other party was culpably negligent. 11

2d. What amount of damage shall be recovered? The claimant insisting that he is liable only to the extent of the actual value of his vessel and freight, and that the Commissioner fixed that value too high, and the libellant insisting that he is entitled to recover the whole value of his vessel, she having been a total loss, and that the Commissioner found the value of the defendant's vessel too low.

12 I.

On the main question, the culpable cause of the collision, there is an unusual variety of testimony, including the officers and men of the colliding vessels—those of the six neighboring vessels on both tacks—residents on the shore, spectators in full sight—and wreckers and divers who endeavored to get up the wreck.

There is much less material contradiction than is usual in such cases

The principal points of contradiction are as to the dis-
13 tances and bearings and precise localities, about which witnesses who only looked upon the scene while under way, close hauled in "a short cross chop sea, all up and down," amid shoals and breakers, cannot be relied upon for anything like precision or certainty.

The most practised eye under such circumstances loses all its skill, and distances and bearings and exact positions are to be modified so as to reconcile them with the testimony of fixed facts and deliberate observation.

The importance of these contradictions vanishes before
14 fixed physical phenomena, uncontradicted testimony of impartial observers and facts which are conceded by all.

II.

The first material fact in dispute is where the collision happened. Smith, who saw the wreck within half-an-hour after the accident, lived at the dock; stripped her the next morning; bought her and endeavored to get her up; says she lay three-quarters of a mile W. by N. from the steamboat dock; more than three-quarters of a mile from shore,
15 and one-eighth from Crow shoal; half a mile from buoy No. 4. Some of the witnesses place her nearer the shoal, and the defendant's witnesses further off.

This is about the mean of all the testimony and is to be taken as the true position.

III.

The top or shoalest part of Crow Shoal is about one-quarter of a mile—440 yards—wide, on which the water is

seven to ten feet deep at low water. The shoal then runs off rapidly to the eastward 100 to 200 yards, where the water is sixteen to eighteen feet deep, and outside the shoal it is 16
twenty to twenty-five feet.

These measurements show that at the first of the flood, wind (full breeze) and tide in opposite direction, with breakers on the shoals, there is great room for various opinions in the witnesses as to the precise place of the collision, and, the character and shape of the shoals being considered, the wreck was liable to change its place.

To all who saw the Wells, it was quite apparent, that she was very deeply loaded and that it must be imprudence and rashness even, for her to attempt difficult and dangerous 17
maneuvers, in the direction of the shoal, made up of quicksand on which if she touched she must be inevitably lost, or in the other direction where she might meet as certain destruction in collision with some of the other vessels to the leeward.

"The shoal is quicksand; a vessel works directly down "into and under quicksand; quicksand all around that "region."—Smith, 54.

"Been cruising about Crow Shoals as a wrecker."— 18
McGlinn, 53.

"Vessel now on shoal lies in seven or eight feet water, "sunk several feet in quicksand."—McGlinn, 54.

"Were breakers on the shoal."—L. Smith, 45.

"The Wells could have tacked but would have gone "ashore on the shoal if she had tried; the breakers were "very close to her; she could not have come the other way "for she would then have run into us or into the Ann 19
"Caroline."—Winsmore, 116.

"The Wells was dead to windward as far as she dare go; "could not avoid the Caroline by putting her helm up; "would then have run into the Caroline, nor could Wells "go off on other course without running on the shoal."—Oliver, 22.

"There was not room for the Wells to go about at time "of collision."—Oliver, 23.

"I don't know as the Wells could have done any thing
20 "to have avoided the collision; she could not keep off; if "she had went about she would have gone on the shoal; "she could not have gone under the stern of the Caroline; if "she had tried to do it she would have run into her: the Wells "was farthest to the windward; the Ann Caroline had the "best of the channel and could easily have avoided the "Wells; my opinion at the time was that the Wells could "not have avoided the collision, and that it was a shame "that the Caroline ran into her under the circumstances."—Hickman, 59, 60 and 63.

21 To the same effect.—Hand, 69. Oliver, 23. Squires, 25. Baker, 29. Bloomer, 32–3.

IV.

There were then near her the James H. Deputy, a little astern and a little to the eastward of her; the Cornelia, a little further astern and a little further to the eastward; and the Mary E. Matthews, still further to the eastward and
22 also a little astern of the Wells. She had thus no course except to go ahead. If she had attempted to fall off the wind she must have gone under the bows of the other vessels to certain destruction. If she had attempted to go about towards the shoal she would have been in great danger of getting on to the shoal, and also in great danger while going about of being driven by the wind on to one of the other vessels. The slightest mishap in getting about might have sent her to destruction in either direction. She was the best judge of her safe course. It was her peculiar danger that
23 she was bound to observe. She was near to the shoal with nothing intervening; others could judge of it only by looking over her and beyond her and had no interest to observe.

If she had gone about she probably would not have

escaped the Ann Caroline, and then for the collision she would have been responsible for the false maneuver.

"The Harris was 100 yards from the collision, right to "leeward."—Jermain, 74.

"The Cornelia was to leeward of the Wells, about 200 or 24
"300 yards."—Hand, 68.

"And between the Ann Caroline and the Wells, to the "windward of the Ann Caroline."—Hand, 68.

"The Matthews was a mile or more to the Westward of "the Ann Caroline when she tacked towards the shoal."—Hickman, 63.

"Deputy astern and to leeward of the Wells 20 or 30
"yards."—Oliver, 21. 25

"Fifty yards."—Winsmore, 119.

"Deputy was about her length from Caroline, and about "100 yards to leeward of Wells."—Oliver, 23.

V.

It is conceded that the Wells was on her larboard tack, close hauled, and it is clearly proved that the Ann Caroline, 26
while on the same tack, also close hauled, long before she had run out her tack, suddenly tacked again and run into the Wells and sunk her, and that this was in full daylight, at half-past two or three o'clock, P. M.

It is conceded to be one of the general rules of navigation, that when two sailing vessels are crossing so as to involve risk of collision, then if they have the wind on different sides, the vessel with the wind on the port side must keep out of the way of the vessel with the wind on the starboard side. 27
But "these rules have their exceptions in extreme cases, "depending upon the special circumstances of the case, "and in respect to which no general rule can be laid down "or affixed. Either vessel may find herself in a position at

"the time when it would be impossible to conform to them
"without certain peril to herself, or a collision with the ap-
"proaching vessel.

"Under such circumstances the master must necessarily
"be thrown upon the resources of his own judgment and
28 "skill in extricating his own vessel as well as the approach-
"ing vessel from the impending peril. These cases cannot
"be anticipated, and, therefore, cannot be provided for by
"any fixed regulations. They can only be examined, and
"the management of the vessel approved or condemned, as
"the case may be."—By Judge Nelson, delivering the opin-
ion of the Court, 10 How. 482, St. John, vs. Paine.

To the same effect are the new regulations of Congress for preventing collisions.—13 Stat., at large, 1864, p. 58, articles 12, 18, 19, 20.

29 This rule is also to be taken subject to the reasonable rule, that a vessel is expected to beat out her tack and not to tack unexpectedly so near the other vessel, as not to give timely warning to her to adopt measures of escape. Now, after the Ann Caroline had tacked and got steadily under way, so that her new direction would be reasonably known, there was not more than one minute of time before the collision, probably not half a minute.

Furthermore, the collision was actually caused by the Ann Caroline violating the rule. Winsmore, master of the
30 Deputy, the nearest spectator, says, (folio 115,) "If she
"(Ann Caroline) had kept the direction she was going when
"she crossed our bows, she would have cleared the Wells
"under her stern. If they had not changed her wheel she
"would have gone under the Wells' stern."

"Our vessel made her tack when more than two-thirds of
"channel over towards Jersey Shore."—Scarborough, 41.

"On previous tack went one-half or a little more across
31 "to Jersey Shore when he tacked."—Wilden, 49.

"Observed Caroline, and she was then round on her star-
"board tack going towards Crow Shoal and three or four

"hundred yards off from witness; thinks both vessels about "the same distance up the river."—Oliver, 23.

"Saw her, just as she got about two-thirds of her tack "only run out, when she came about."—Baker, fol. 28.

"We would have gone perhaps about one-quarter of a "mile further on that tack."—Sheridan, 78.

"When we went about we were, I should think, about 32
"half a mile from land."—Sheridan, 83.

"If we had kept on our course we would have beaten out "our tack in from fifteen to twenty minutes as I think."—Sheridan, 84.

"I saw the Ann Caroline—when she came on the short "leg she had not beaten out her tack; when she came on to "the short leg she could have gone half a mile further."—Winsmore, 114. 33

VI.

The Ann Caroline might have avoided the accident without difficulty, doubt or peril. If she had gone about again she would have avoided it, but if she had starboarded her helm at the distance of 100 feet she would have cleared the Wells (Hand, 66); for she struck her, as it was, only ten 1
feet from her stern.

"She would have avoided her if she had not put her 34
"helm down."—Winsmore, fol. 115.

VII.

The Ann Caroline had no sufficient look-out. One or two of the witnesses say a man was *stationed* to look out, but no one says he was actually there; no one pretends to have seen him looking out; and the indirect proof is that he was not there. The captain says in his answer (fol. 13) that 35
one of his men was below, yet all are shown to have been on

deck except the alleged look-out who was doubtless below. It is certain that, wherever he was, he did not look out well. Paul Peterson was his name. He stayed by the Ann Caroline six months (fol. 51.) It is now more than ten years since the accident, but he has not been examined as a witness.

There were six men on board (fol. 37), master, mate, steward, and three men. Sheridan was at the wheel. The
36 captain was there and ordered wheel put hard down (fol. 80). Scarborough, the mate, ordered wheel hard down (fol. 38). McCormick, the cook (steward), stood near at the time (fol. 88). Cassidy was on deck at the time of the collision (fol. 90). He and the mate were splicing a rope on the larboard side (fol. 92); heard the captain give the alarm and say, "down with the wheel—does none of you see that schooner." I then ran round to look at her, stopped for a minute, and then went forward to see what was up (fol. 93).

The whole testimony on this point is perfectly expressive
37 of complete surprise, and shows that the real culpable negligence which caused the collision was the want of a competent and efficient look-out.

Citations under this point are by mistake placed under point IX for 46. 48 55.

VIII.

It is contended on the other side that the Ann Caroline had no steerage way. The preponderance of testimony is overwhelming to show that she was under full headway after she went about. She crossed the bows of
38 the three other schooners against the wind, a distance of several hundred yards; and although perfectly light, she cut herself clear down into the cabin of the Wells, a new vessel. Her own men, testifying while the fact was recent, say that the captain did not go below till after she had filled away; and after he came on deck again, he had time to exclaim, "Have none of you seen that vessel?" and to order the helm down; and the witnesses on the other vessels say that she passed their bows at a rapid rate. It is literally quite impossible that the little Wells, deep in the water, could swing
39 her stern out sideways so as to give herself such a wound on the bows of another vessel.

The speed of the Ann Caroline.

"Running full five knots or more; had full sail on."—Oliver, 22.

"Coming under four or five knot breeze, and pretty quick."—Squires, 25.

"Ann Caroline was then short of one quarter of a mile "from him; coming right towards him at the rate of four or "five knots."

"Ann Caroline was going about five knots."—Baker, 29. 40

"Ann Caroline was going fastest; thinks she was going "four or five knots."—Bloomer, 33.

"Caroline, at the time of the blow, was going her full "speed under that breeze."—Hand, 66.

"I saw the vessels when they came together, the Ann "Caroline was then going six knots an hour, I should think. "* * * The Ann Caroline had been long enough on "that tack to have gathered full headway, and was under full 41 "headway when she struck."—Hickman, 59.

"It was blowing a stiff breeze."—Jermain, 71.

"A good commanding breeze."—Winsmore, 117.

"Our vessel went about and filled away on her starboard "tack; after she filled away I took the wheel."—Sheridan, 79.

"Our Schooner, (Ann Caroline,) can go from five to six 42 "knots an hour under the sail she had on that breeze."—Sheridan, 84.

The witnesses on board the Ann Caroline say, "The "Ann Caroline had got on no steerage way; could not "answer her wheel at all."—Wilden, 51. Cassidy, 81. McCormick, 85. Sheridan, 79

The mode of striking and the force of the blow.

"Struck Wells abaft main chains, six to eight feet in her

"cabin; it was a very hard blow; Wells began sinking "directly."—Oliver, 22.

"On her starboard side, near cabin, about ten feet from "taffrail, with a very heavy blow; blow a little angling."—Squires, 25.

"Struck Wells on her quarter abreast of cabin, ten or "fifteen feet forward of taffrail; knocked broad hole into
44 "stern, and jolted kegs of molasses on deck upon their heads; "blow cut into the cabin house and down into the body of "the Wells."—Baker, 29.

"She cut into cabin; very heavy blow; ten to twelve feet "from taffrail."—Bloomer, 32.

"Mainsail was torn in pieces, foresail sound and good; "after shroud was cut away."—Little, 34.

"Saw wound she received; went into hold in water armor;
45 "considered it large enough to let in a cow; it was on star- "board quarter, about midships of cabin."—McGlinn, 53.

"Stripped her; found mainsail torn to pieces; her fore- "ward sails and rigging all sound, foresail and two gibs."—Hand, 54.

"She came into the Wells, striking her aft amidships. I "saw her jibboom make a hole through her mainsail."—Hand, 66.

46 "She struck the Wells about the foreward part of the "cabin, aft the mainmast; a very heavy blow; it sunk the Wells in about three minutes; I heard the blow very plain." Hickman, 59.

The following citations belong under point VII fol 37

"The law requires of a colliding vessel that she shall "prove not only that she has a competent look-out stationed "at the proper place, but also that the look-out was vigilantly "performing his duty; and if he placed there persons who "cannot be witnesses, it is his own fault; it was his own "voluntary act, and can, therefore, be no sufficient reason

"for the absence of that proof which the law requires him to "produce." 47

21 Howard, 192. The Brig James Gray, vs. Ship John Fraser.

This, between two sailing vessels, was a case of two negligent look-outs.

So in 24 Howard, 214. Union Steamship Co., vs. Virginia Steamship Co.—a case between steamers, the Court say:

"It is shown by the evidence that the colliding steamer "had two look-outs, but it is not shown what, if any, duty "they performed in the emergency." A look-out who 48 does not look out is not a look-out in contemplation of law.

Now, in this case of the Ann Caroline; she was running rapidly, five or six knots, through a fleet of vessels in narrow navigation, within twenty yards of the bows of some of them, and no one on board of her saw the John C. Wells with all sails full, till within, at farthest, 50 yards of her, although hailed in the loudest manner—and in the flurry of surprise and agitation it is not to be wondered at that she made the wrong movement. 49

In the opinion of nautical observers on the spot at the time, this negligence was the cause of the collision.

Captain Winsmore, a ship master of twenty-five years experience, says, "It was day-light; I was looking right at "it, and I made up my mind that the Ann Caroline was what "caused the collision; the other man could do nothing, and "was not going very fast any how." (fol. 116.)

Captain Hand, with twenty-five years experience, says, 50 "The Ann Caroline ought to have kept a better look-out, "(fol. 66.) I think if there had been a look-out on the Car- "oline there would have been no collision; I at the time "formed the opinion that the Ann Caroline was to blame." (fol. 67.)

Hickman, with ten years experience, says, "There would "have been no difficulty at all in her going under the Wells' "stern if she had been keeping a look-out." (fol. 59.)

"The Ann Caroline had the best of the channel, and
51 "could easily have avoided the Wells. My opinion at the
"time was that the Wells could not have avoided the col-
"lision, and that it was a shame that the Ann Caroline run
"into her under the circumstances." (fol. 60.)

These are equivalent to Trinity Masters.

Scarborough, the mate of the Ann Caroliue, says, "When
"the Wells was reported by the captain, then witness saw
"her; she was then on the bow coming up; all sail set;
"running five or six knots, and hardly fifty yards off." (fol.
52 37, 38.)

Wilden, the master, says, "Then saw the Wells on the
"larboard side, about fifty yards off; sang out to put helm
" of Ann Caroline hard down." (fol. 50.)

Sheridan, seaman, says, "From three to five minutes
"after our vessel filled away, the captain looked under the
"boom, and sang out, "There's a vessel a-head." I saw the
"vessel immediately after she bore a little on our lee, bow
53 "not over fifty yards off." (fol. 79.)

M'Cormick, cook and steward, says, "When I first saw
"her she was about the length of our vessel away from us.
"(fol. 87.) The captain came out and sung out, "Have none
"of you seen that schooner?" the captain then told the man
"to put his wheel down." (fol. 89.)

Cassidy, seaman, says, "I did not see the Wells until
"the captain gave the alarm; they were then pretty near
54 "together, within a second. (fol. 91.) When the captain
"gave the alarm, he said, "Down with the wheel; does
"none of you see that schooner?" (fol. 93.)

These are all who were on board the Ann Caroline, except Paul Peterson, the pretended look-out, who was not produced as a witness. The strongest testimony in his favor is that of Scarborough, the mate, who says, "She had two men forward; Paul Peterson was put on look-out by witness;

he stood forward by the windlass on the starboard; saw him forward, but cannot tell whether he was stationary there." (fol. 40.)

There is no allegation, nor is it possible that he was vigilantly performing the duty of looking out.

IX.

The Act of Congress of 1851 referred to by the Circuit Judge in his opinion on the exceptions (vid. Appendix), has no application to the case. That provides in substance that owners of vessels in personal suits shall not be liable for more than the value of vessel and freight. In cases to which the act applies it is the duty of the owner to set up this limitation as beneficial to himself that issue may be taken upon it. This is not done in this case, because in it no more than the statute allows, can be recovered. We only seek to charge the vessel, not the owners.

X.

As to the amount of recovery. The decree of the circuit is that the libellant recover "the loss and damages by him sustained by reason of the collision," and it was referred to a commissioner "to ascertain the amount of such loss or damage." (fol. 124.)

The John C. Wells was totally lost. Her value was $5,000, and that sum with interest from the time of the accident was the measure of damages. This amounted to $7,362 50, which was the amount reported by the commissioner as the true value with interest, *vid* his report, (fol. 146.) and confirmed by the Court. The first two exceptions embracing that amount (fol. 148.) being disallowed. (fol. 150.) This is the adjudicated amount of our loss.

XI.

Our loss being $5,000 at the time of the collision, and the suit being *in rem* we were entitled to recover $5,000 at

that time, if the Ann Caroline was then worth so much. She was worth $7,000, (*vid* answer, fol. 14.) sworn to by the master, who was also owner. But by consent her value was fixed at $5,000, the value of the Wells (*vid* consent, fol. 9.)

59 This agreed value of the Ann Caroline and the value of the Wells was the same, $5,000.

The value of the Ann Caroline with interest would be precisely equal to the value of the John C. Wells with interest, and this the libellant was entitled to recover. $7,362 50 with interest from the 12th day of November, 1860, the date of the commissoner's report. (fol. 147.)

XII.

60 The true construction of the stipulation taken all together, is, that the stipulators undertake to pay the money awarded by the decree, "so far as they shall be able to do so with the value of the thing and the interest upon it up to the time of payment. The value is inserted in the stipulation only by way of recital. The undertaking of the stipulation is to pay the whole decree, from which, in practice, they may be relieved on payment of the value of the thing and the interest. This justice requires them to pay. The Court construes the stipulation to meet the ends of justice.—
61 Law vs. Townsend, Ware Rep. 202.

This has been held to be the true construction by the District Courts of New York, by Judge Betts, in the case of the Susan Ludwig, (*N. Y. Evening Post*, of July 23d, 1853,) and by Judge Hall, in the case of the Jewess, (*New York Daily Times*, of December 28th, 1854.) See them in the appendix, also by this Court in the Virgin, 8 Pet. 554, where the Decree was given for the stipulated value, with
62 interest

XIII.

When the property is discharged on stipulation, the only evidence of value is the value fixed by appraisement or

agreement. That valuation is made with the property in view, subject to the examination of all parties, and for the purpose of making a just substitute for the *res* as it then exists. In contemplation of law it is a judicial valuation, binding for ever upon all parties.

It seems to be a revolution in the order of proceedings *in rem*, to hold that after six years of litigation, that value can 63
be reduced by the losing party on the loose testimony, and mere opinions of transient sea-going witnesses, who testify from casual observation, or even from examination, at another time.

Ad. Rule XI. Benedict, Ad. § 444. 447. Dunlap, Prac. 176.

XIV.

The Court erred in its order of May 30th, 1861. (fol. 150.) The first report of the commissioner (fol. 146.) 64
should have been confirmed in all points. That should now be done by this Court, and a decree given accordingly for the amount then reported with interest.

The following is suggested as the proper form of the decree to be made herein, framed on the decree in the case of the Virgin, 8. Pet.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States, for the Southern District of New York, and was argued by counsel. 65
On consideration, whereof, it is ordered, adjudged and decreed, that the decree of the Circuit Court that the libellant is entitled to recover his damages for the collision mentioned in the libel, and the reference to a commissioner to ascertain and report the amount of damages be, and the same is hereby affirmed.

And it is further ordered, adjudged and decreed, that the first report of the commissioner, bearing date November 12th, 1860, reporting the amount of such damages at $7,362 50 66
be, and the same is hereby confirmed, and that the said libellant is entitled to the said sum, with interest thereon at the rate of seven per cent. from the date of said report to

the time when the decree of this Court shall be carried into effect in the Circuit Court. And it is hereby further ordered, adjudged and decreed, that the decrees of the District Court and Circuit Court, so far as they differ from this present decree, be, and hereby are reversed accordingly.

And this Court further proceeding to render such decree
67 as the Circuit Court ought to have rendered in the premises, It is further ordered, adjudged and decreed, that the libellant herein recover against the Schooner Ann Caroline and John Sedgwick, Leonard Church and Martha Beaston the claimants, and against Daniel C. Higgins and Elzey S. Powell the stipulators, for value, the sum of $5,000, being the agreed value of the said Schooner Ann Caroline, with interest from the 11th day of February, 1854, the day when the said Schooner John C. Wells was totally lost by said collision, to the execution of this decree in the Circuit Court,
68 together with the costs of the libellant in the District Court and the Circuit Court as taxed, amounting to the sum of seven hundred and thirty-one $\frac{77}{100}$ dollars, and the costs in this Court to be taxed, and unless they shall do so within ten days after the said Circuit Court shall require the same to be done, that execution issue in due form of law against them and against David Cox, who, with the said John Sedgwick and Elzey S. Powell became and are the stipulators or obligors to answer all damages and costs if they should fail to make their appeal good in this Court.
69 And it is further ordered that a mandate issue to the said Circuit Court with directions to carry this decree into effect.

E. C. Pendleton
for Libellants

1259

Appendix to Points for Libellant.

U. S. CIRCUIT COURT. 1

WILLIAM H. WELLS
ags't
THE SCHOONER ANN CAROLINE.

Opinion of Judge Nelson.

NELSON, C. J.—The libel in this case was filed by the owner of the schooner John C. Wells, against the schooner 2
Ann Caroline, to recover damages for a collision occurring in the month of February, 1854, on the eastern shore of the Delaware Bay. The two vessels were beating up the bay in company with several other vessels, in a channel about a mile wide, between Crow Shoal and the Jersey Shore. The wind was N. N. W., about a five or six knot breeze, the tide, flood, setting up the bay. The John C. Wells was close hauled on her larboard tack, which was a long tack from Crow Shoal to the Jersey Shore. The Ann Caroline close hauled on her starboard tack on the opposite course from 3
the Jersey Shore to Crow Shoal. The Wells was very heavily laden; the Ann Caroline in ballast. The two vessels had tacked at the Crow Shoal, upon the long tack, nearly at the same time; the Caroline at the time being to the leeward of the Wells and somewhat astern of her. The Ann Caroline run out but one-half or two-thirds of her course when she suddenly came round on her starboard tack in consequence of a vessel ahead suddenly tacking and obstructing her course. While on this course she came in collision with the Wells, striking her on her starboard side, about ten or 4
fifteen feet from her traffrail, opening her side, and from which injury she sank to the bottom of the channel in a few minutes.

The main ground upon which the defense of the Ann Caroline is placed is that she was on the starboard or privileged tack, and that it was the duty of the Wells to give way and pass to her right. This rule of navigation is admitted by the counsel for the Wells, but it is insisted that it has no application to the relative position of the two
5 vessels as made out upon the proofs in the case. It is claimed on his part that the Wells was to the windward of the Caroline and ahead or above her in the channel, and that if this rule had been observed and the Wells had ported her helm, a collision would have been inevitable; that the change of course would have brought her ahead against the starboard side of the Caroline, and that a proper maneuver in the emergency was to starboard her helm, which she did, and which would have avoided the other vessel if she had not ported her helm at or about the same time, which caused
6 her to strike the Wells on her starboard side, but a few feet from her stern. The controlling question in the case is whether or not the Wells was to the windward and so far above the course of the Ann Caroline, before the two vessels came together, as to forbid the application of this settled rule of navigation, that when two vessels are approaching each other on opposite tacks, both having the wind free, the one on the larboard tack shall give way and pass to the right.

On looking into the proofs in the case which are very
7 voluminous, it will be found that the testimony of the master and hands on board the respective vessels as usual is contradictory—those of the Wells claiming that the course of the Caroline was to the leeward and southerly of that of their vessel, while those on the Caroline insist that her course was to the windward of the Wells.

If the case stood upon the testimony of these witnesses, we should regard it as so far conflicting and doubtful as to lead us not to interfere with the decree of the Court below dismissing the libel. But there are four witnesses, masters
8 and hands upon other vessels, engaged at the same time in beating up this channel and who were on the same tack with the Wells, but to the leeward and a little to her stern, who witnessed the collision and the course of the vessels

previous to the accident, and they all concur in confirming the testimony of the master and hands of the Wells as to the course and relative position of the two vessels. The testimony of one of these witnesses has been taken in this Court, and was not before the Court below, which is very 9
explicit and direct upon this question.

I do not put this case upon a rule stated in some of the books, and which was referred to in the case of the Neptune (10 How., 581), which states that if the vessel on the larboard tack is so far to the windward that if both persist in their course the other will strike her on the lee side, abaft the beam, or near the stern, in such case the vessel on the starboard tack must give way.

The objection to this rule is, that it is too precise and exact for practical use. The better opinion is, that the vessel 10
on the larboard tack must give way even though she be a point or a point and a-half to the windward. But while no encouragement should be held out to any very nice calculation of the vessel bound by the general rule to give way, as to the precise courses of the two vessels, it is clear that she may be so far to the windward of the other as to entitle her to keep her course and make it a fault of the one on the starboard tack to change her course and attempt to pass to the right. In the case before us the witnesses on the vessels accompanying the two in question say, that if the Ann 11
Caroline had kept her course instead of porting her helm, she would have passed under the stern of the Wells, and the place where she struck her confirms that view.

There were several considerations urged on the argument by the counsel on both sides in support of their respective views of the case, which, as they rest principally upon a controverted state of the facts, we do not deem it important to notice. We must, therefore, reverse the decree of the Court below and direct a reference to a commissioner to take proofs and report upon the libellant's damages in the 12
case.

U. S. Circuit Court.

13

WILLIAM H. WELLS

vs.

THE SCHOONER "ANN CAROLINE."

Opinion of Judge Nelson on the Exceptions.

This case came up on Exceptions to a Commissioner's Report. The libel was filed to recover for the sinking of the
14 Schooner William H. Wells, owned by the libellant, by the the Ann Caroline, and a decree was given for the libellant on an appeal to this Court, and it was referred to a Commissioner to ascertain the damages. The Commissioner reported the value of the Wells at $5,000. The Ann Caroline has been discharged from custody by consent, on the claimants filing a stipulation for value in the sum of $5,000. On the hearing before the Commissioner the claimants offered to prove that the Ann Caroline was not worth $5,000, and insisted that according to the Act of Congress
15 of March 3, 1851, the libellant's recovery could not exceed the value of the Ann Caroline. The evidence was excluded, and on this ground the claimants excepted.

Held by the Court.—That the Act of Congress is applicable to the case and the libellant's recovery cannot exceed the value of the Ann Caroline.

That the valuation of the vessel, whether by consent or otherwise, for the purpose of bond or stipulation, to discharge it from custody of the Marshal, is not the test of value in cases of collision under the Act of 1851.

16 That the evidence, therefore, should have been received.

The case was referred back, therefore, for a further report.

U. S. District Court. 17

BEFORE JUDGE BETTS.

ALEXANDER HARRISON,
vs.
THE SCHOONER SUSAN LUDWIG.

This was an action to recover the possession of the vessel, 18
which the claimants held by virtue of an alleged sale by the master in a foreign port. The vessel was bonded by the claimants and delivered to them.

The Court gave a decree for the libellant in the cause, whereupon "The question was raised whether the libellant was entitled to interest upon the appraised value of the vessel. After argument heard on both sides, the Court decided that the libellant, having been entitled to the possession of the vessel at the time of filing the libel, is now entitled to recover the appraised value and interest thereon, 19
by way of damages."

For Libellant, Mr. Benedict.

For Claimant, Messrs. Weeks & De Forest.

(From *The Evening Post*, of July 23d, 1853.)

1266

20

U. S. District Court.

BEFORE JUDGE HALL,

DEC. 27, 1854.

JAMES WILSON,
vs.
THE STEAMSHIP JEWESS.

21 The Steamship having been sold and her proceeds paid into the registry of the Court, this suit, one of several against the vessel, was brought to trial, and a decree rendered in favor of the libellant. From this decree the claimants appealed to the Circuit Court, and the fund still remaining in Court, they applied to be allowed to appeal on giving security for costs. The libellant objected to this, claiming that security should also be given to pay the amount of the decree as usual.

Ordered by the Court, That the motion be granted so far
22 as to allow the appeal on giving security for costs and the *interest on the decree.*

For Libellant, McMahon.

For Claimants, Mr. Burrill.

(From *The N. Y. Daily Times*, of Dec. 28th, 1854.)

1267

1869

U. S. Supreme Court,

SCHOONER "ANN CAROLINE,"
ag'st
SCHOONER "WELLS."
} *On Appeal.*

FIRST POINT.—The libellant in bringing his suit, of course assumes the burden of making out his case by the weight of evidence produced by him. No deficiency on our side, or balance, or doubt, is in his favor. All such make against him.

He comes doubly bound to make this out when he comes into court, with his vessel on the wrong or unprivileged tack.

SECOND POINT.—The witnesses produced by him, and on whom he relies, give evidence of no weight to him when properly considered.

1st. The Court does not and will not let the testimony of experts even, who do not appear to found their judgment on erroneous principles, set aside the settled law.

2d. Much less will they admit experts who are mistaken in the principles on which they attempt to judge, those produced by libellant only pretend to found their judgment on the erroneous ground that the long tack keeps on and the short tack gives way.

3d. They are evidently mistaken in all their views of the facts on which they founded their opinion.

I. Their position was not a fixed one, but one moving with great rapidity.

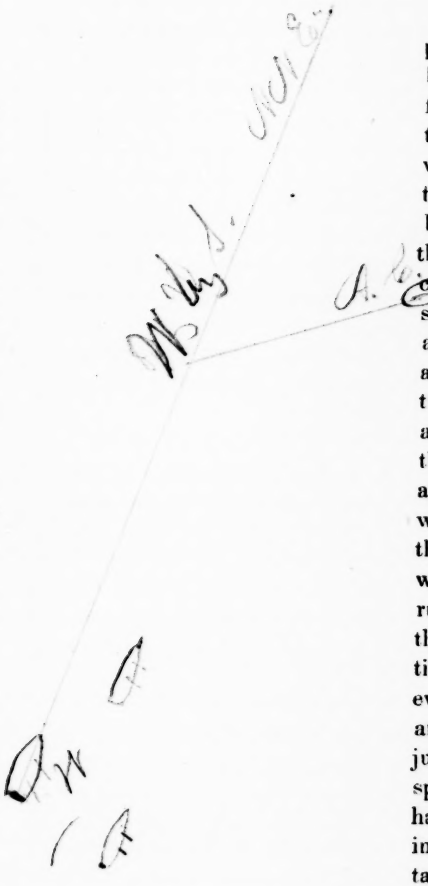
The tide was second quarter flood, and they were running with it six knots through it.

II. They are evidently mistaken as to their speed and that of the Ann Caroline, one vessel, the Wells, running *N. N. E. evidently with the strength of the tide*, and the other, the *Ann Caroline W. by S.*, evidently, if not against, at least *diagonally* and across, thus the Wells ran six miles by wind, and about two by tide makes (an hour)..... 8

The Ann Caroline (if well under weigh) the same speed, 6 miles, through the water, less the tide setting against her, 2..... ... 4

Leaving the speed of the Wells 4 more, or double that of the Ann Caroline: this

would easily account (if striking abaft the beam is to govern) for the apparent discrepancy in our people and their claims of the wind and position.



This would show the position as contended for by them when we were first seen, on the theory that we were under weigh, on the starboard tack, and would fully bear out our case. The three vessels, whose officers are examined, would see, as of course looking ahead to leeward, just as they say; though, in truth, we were, in reality, to windward of them. This explains the apparent contradiction of who was to windward—the difference of speed with which each was running, allowing their theory, that we had motion ahead. It is thus evident from facts fixed and not depending on judgment, to wit, the speed and tide, that they had gone, if both were in motion, twice the distance we had, and thus

first reached the point, where collision was imminent; to allow a vessel thus by speed, or close shaving, to make out she was to windward, by getting to the point first, would be to put at loose ends the most necessary and wholesome rule of navigation, and the District Court has emphatically long since decided it cannot be done.—The "*Northumberland*" in District Court.

III. But it is evident from the testimony of our witnesses, that we were stationery, having just gone about. They all were in a position to know, and unless five men have committed perjury in testifying to a fact, we are right. Their witnesses, from their moving position, may be mistaken, and are so undoubtedly; and we must thus reconcile, if possible, all the evidence otherwise apparently contradictory.

IV. Their speed is shown (throwing us entirely round) west and north on to the long tack. Their blow not only did this, but knocked off our jib-boom.

The argument that we knocked a hole in them is nothing, when we consider a vessel right down with the water's edge striking against a high vessel, with a surging sea. Any other effect would be impossible.

V. They are mistaken about being unable to go about. The Wells could easily have done so.

1873

THIRD POINT.—The vessel on the larboard tack, if she sees one on the starboard tack, is bound to take measures in time, not at the last moment, to avoid the collision. The other vessel has the right and is bound to suppose that the larboard tack will take proper steps to avoid the collision; and even if the starboard tack does, in the peril of the moment, make a false move, she is not liable.

See Phillips *vs.* De Peyster.
Ship Northumberland, scrap-book, p. 119.

FOURTH POINT.—Parties should be confined to their allegations, and not allowed to set up a different case than alleged in the pleadings. What is the case here?

The libellant alleges we went about so suddenly, they had no time to get out of our way. The evidence proceeds on no such ground.

Now, this is negatived by their own witnesses, fully showing they waited for us to clear them, and took no steps on their part till too late.

The case set up on the hearing is, that they could not tack, as being too near the shoal.

The answer to this is twofold—that the libel sets up no such ground, and that the proof by the great weight of evidence shows it to have no foundation in fact.

They are then driven, as the only fault on our part, and hope on this to get a decision, to say we

tacked without cause. The answer to this is, that we would not leave our long and best tack. No code of philosophy and no law will presume that a man does a thing detrimental to himself without cause, and here we have six men who saw the vessel ahead tack, and others who saw what none of libellants appeared to be able to see, to wit: vessels all around the Ann Caroline.

The evidence of one witness who saw, and whose *business* it was to see, as well as *duty*, is worth an unlimited amount of evidence of those who did not see, and who had no call to look, and had their hands full.

The Ann Caroline was close hauled on the starboard tack, and kept her course.

The Wells was close hauled on the larboard tack, and did nothing, or nothing in time, to pass the stern of the Ann Caroline; she may have luffed some.

It was broad daylight, and the vessels had been for a long time in full view.

The Ann Caroline's jib-boom first went into the fore rigging of the Wells; her bow or stem struck the Wells about her mainmast, on the starboard quarter.

Under these facts the law is plain and not to be questioned. The Wells was in fault solely; she was bound to have steered clear of the Ann Caroline in time, and in a proper manner, without requiring the Ann Caroline to do anything.

Hope, 1 W. R. 157.
Rose, 2 W. R. 1.
Test., 6 Ly. W. 190.

The Ann Caroline had the right and was bound not to alter her course.

Any case to be made by the Wells for an apportionment (no other claim can exist) must depend upon her making

out clearly that the case constitutes an exception to the rules, and that the rules did not apply.

Harriet 1, W. R., 186.
Friend's, 485.

The entire *onus probandi* is upon the Wells which sets up, that the Ann Caroline should have given way to her and departed from the rule, and that the rule requiring the Wells to give way to the Ann Caroline was inoperative, thus constituting hers an exception case.

The Wells sets up, (1) that the Ann Caroline did not beat out her starboard tack and thereby came unexpectedly across the Wells. In answer to this we say that it was the interest of the Ann Caroline to hold on and beat out her starboard tack. The inference is that she would be navigated to the best advantage.

It appears that vessels ahead of the Ann Caroline compelled her to shorten her tack, they going about ahead and under her lee.

If the Wells had kept a proper lookout she would have seen that the Ann Caroline must depend on the vessels ahead for the extent of her tack, and might be compelled to tack at any moment.

The Wells, if keeping a lookout, would have seen the Ann Caroline when preparing to tack, and before actually going about so as to have had plenty of time to give way by porting helm and passing the stern of the Ann Caroline.

Low *vs.* Schooner David J. Anderson.
J. Betts, No. 18, pp. 32, 35.

If keeping a good lookout she would have seen the schooner to her leeward, giving way to the Ann Caroline and have done the same. She had plenty of room to leeward to have kept away, if doing so in time.

The Wells sets up that she had not room to windward to have gone about, after seeing the Ann Caroline on her starboard tack. The place where she sunk shows where she was, and the evidence is conclusive that she had plenty of room.

She had no right to hold on so long, and should have gone about as soon as the Ann Caroline went about.

As a further exception, the Wells sets up that a Rule in Navigation directs that if the vessel on the larboard tack is so far to windward that, in case both persist, the vessel on the starboard tack will strike the larboard to leeward, and abaft the beam, "the vessel on the starboard tack must give way." There is no such rule of navigation, nor exception to the rule. Dana, 84, 186.

It originated with the author of the "Seamen's Friend." (Dana, 84, 186.)

It has never been applied, but distinctly and emphatically repudiated by the District Court, in the case of the Northumberland, 1847.

This exception amounts to no more than that the privileged tack should not pertinaciously hold on when knowing that the other will not or cannot give way, and she, the privileged tack, can give way without risk or damage to herself.

In the case of the Northumberland, it was the opinion of some of the best and most experienced ship-masters (wholly disinterested), that the pretended exception tended to destroy all certainty and safety, in the application of the rule; that the larboard tack should at once, and in time, give way without waiting for nice calculations, &c.

The Wells and Ann Caroline would have met head to head, and one was not to windward of the other.

The Ann Caroline might well expect, until the last moment, and until too late, that the Wells would port and pass her stern, and was justified in keeping her course

without alteration ; and if, at the last, committing a fault, would be excusable.

Philip D. Peyster, 6 Leg. ob., § 441.
John Butherick, 8 Jurist, 276, in point with the Northumberland.
Test, 6, 190.
The Hope, 1 W. R., 157.

The Wells sets up as a further exception, that the Ann Caroline could have got out of the way of the Wells, and pertinaciously persisted in her right, when seeing that the Wells did not mean to give way.

This pretence "must be narrowly watched."

See the Hope, 1 W. R., 157.
Northumberland, before cited.

The case of the Commerce, 3 W. R., 287, 293, is cited for the Wells.

This case (p. 298) simply determines that the Commerce clearly had it in her power to have avoided the collision, and saw that the Tay could not avoid her.

Thus, with a full knowledge of what was required of her, and full power to do so, she wilfully and pertinaciously did nothing—as in the case supposed by that of the Hope, 1 W. R., 157.

The Commerce and Tay were approaching, nearly head and head, a slight porting each to the right.

We respectfully submit the decree should be reversed.

C. Donohue.

Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty, N. Y.

1287

Supreme Court

OF THE UNITED STATES.

The Schooner Ann Caroline, her tackle, &c., John Sedgwick, *et. al.*, Claimants and Appellants, *against* William H. Wells, Libellant.	No. 112, Brief and Points of Claimants and Appellants.

This is an appeal from a decree of the Circuit Court of the United States for the Southern District of New York in a case of collision. The libel is *in rem*. The vessel having been seized, was discharged upon the claimants filing the usual stipulations for cost and value—the former in $250, and the latter in $5,000. (Rec., p. 8, 9.)

The cause was tried in the District Court, before his Honor Judge Betts, who dismissed the libel, with costs. (Rec., p. 43.) An appeal was thereupon taken to the Circuit, where the case was tried upon the same pleadings and testimony (with the exception of one deposition (p. 46) taken by the libellant), and the decree of the District Court was reversed, the vessel condemned, and a reference ordered to ascertain the damages. (Rec., p. 49.)

Upon the reference, the claimants offered testimony of the value of the Ann Caroline and her freight pending at the time of her collision, and insisted that the damages should be limited accordingly. The Commissioner rejected

the evidence and adopted as a rule of damages the value of the Wells. Exceptions were filed by the claimants, whereupon his report was set aside and the matter referred back. (Rec., p. 57.)

The Commissioner made a second report, to which both parties filed exceptions; which were, however, overruled, and a final decree entered in favor of the libellant for $7,202 51 damages and costs, for which a "Summary judgment" was entered against the stipulators. (Rec., 74.)

Both parties have appealed to this Court, the claimants from the whole decree, and the libellant from so much thereof as relates to the amount of damages. (Rec., p. 75, 79.)

The record shows, that on the 11th February, 1854, at about noon, a fleet of twenty vessels or more, including the schooners Ann Caroline and John C. Wells, (the two colliding vessels in question), got under weigh from their anchorage near Cape May, and proceeded in company up the Delaware Bay. The wind was fresh from N. W., or N. N. W.; the weather clear and very cold, insomuch that ice formed upon the decks. The tide was about an hour flood, setting up the Bay. The vessels were all beating up the channel which lies between the Crow Shoals and the New Jersey shore, making a long stretch towards the shore and a short one towards the shoals.

The collision occurred about 3 o'clock P. M. A little time before the Wells, when somewhere near the buoy at the lower end of the shoals, had tacked and was standing towards the shore on the larboard tack—heading about N. N. E. The Caroline had also tacked a little before and was standing in the same direction, being also on her larboard tack, and about 100 *rods* to leeward. (Rec., p. 13.) Both vessels were sailing on nearly parallel lines, from $\frac{1}{4}$ to $\frac{1}{2}$ mile apart. The Caroline, being under full headway, was sailing the fastest. The Wells was heavily laden down to the waters edge; the Caroline was in ballast. Before fully running out her larboard tack the Caroline tacked to the westward, towards the shoals, being compelled to do so in consequence of the tacking

of another vessel, which was ahead of her and nearer the Jersey shore. The collision occurred while the two vessels were upon these opposite tacks—the Caroline being close hauled on her *starboard* tack, heading W. by N., and the Wells close hauled on her *larboard* tack, heading N. N. E. By the force of the collision the Caroline was carried round upon the opposite tack, so that her larboard side lay against the starboard side of the Wells.

Although the Caroline was in full view from the time she was seen when on her larboard tack near the buoy until the collision, and all her movements might have been seen by those navigating the Wells, yet she was not noticed by any one of them from that time until after she came about and was approaching upon her starboard tack. The master, who was at the wheel, says he saw her first; that she was then about a ¼ of a mile off; but he does not state how she then bore from his vessel, nor which was to the windward. [It is evident, however, from all the facts and circumstances, that, at that time, the Caroline must have been ahead and to the windward.]

There was nothing done on the Wells to avoid the collision. She persisted in her course until the vessels came very near each other, when her master says he hailed the Caroline to go about; that she paid no attention to his hail, (Rec., p. 13, fol. 29,) and then he put his wheel hard down (Rec., p. 14, fol. 30). He says the Wells was struck on her quarter abreast of the cabin, 10 or 15 feet forward of the taffrail, (Rec., p. 13); but the persons on the Caroline say that her flying-jibboom first took the forerigging of the Wells. (Rec., p. 17).

The master of the Wells further says he might have avoided the collision by going about, but could not because of the proximity of the shoals. (Rec., pp. 13, 14). The evidence shows that in this he was mistaken, for there was in fact abundant room to do so—the collision having occurred from ¼ to ½ mile from the shoals. (Rec., 19, 20).

The libel was dismissed in the District Court, partly because it did not state sufficient facts to enable the Court to determine that the Caroline was in fault, but more especially because the testimony on the part of the libellant

showed that the Wells was in fault in not having a competent lookout faithfully attending to his duty, and in persisting in holding her course and not bearing away from the Caroline as she should have done. In reversing this decree, his Honor the Circuit Judge decided that the Wells was so far to the northward and windward of the Caroline as to render inoperative the rule of navigation requiring a vessel close hauled on the larboard tack to give way to one close hauled on the starboard tack, and that, therefore, she was entitled to persist in her course, and the Caroline was wrong in porting her wheel as she did. (See the Opinions.)

The claimants now respectfully insist that the decree of the District Court was correct; that the Circuit Court erred in reversing the same, and, therefore, the decree of the latter should be reversed and the former affirmed.

I.

An objection was taken in the District Court and also in the Circuit Court, to the sufficiency of the libel; for that it does not state facts necessary to enable the Court to determine therefrom that the Caroline was in fault; and it was so held by his Honor the District Judge: nevertheless, he examined the case as made by the testimony, and upon that also came to the conclusion that the libellant had not shown that she was in fault.

Upon looking into the libel, it will be seen that the faults of the Caroline are alleged to have been in coming about when she did, and running directly towards, and without changing her course so as to avoid, the Wells,—in not having a proper lookout, and in not hailing the Wells or otherwise giving her timely notice of the course intended to be pursued; but it does not state the course of the wind, or the tacks upon which the respective vessels were sailing. It is not possible to determine from the facts thus stated, that the Caroline was in fault in not changing her course to avoid the Wells, since that must de-

pend upon the question of duty, which cannot be determined without knowing upon what tack the respective vessels were sailing. The mere averment that the Caroline was in fault in the particulars before mentioned was not sufficient, and upon a demurrer or exceptive allegation the libel must have been adjudged radically defective. (Rule 23 in Admiralty; see also the The Annie & Jane, 2 Wm. Rob. R., 104; The Virgil ib. 202; The Ebenezer ib. 209, Judge Betts' opinion herein.)

Should it be said that if the libel was not sufficient in these respects it ought to have been excepted to and an amendment procured, the answer is that while the claimants might have demurred or excepted thereto, still they were not bound to do so in order to save their rights, but they were and are entitled to raise the question upon the hearing.

If, however, the allegations be sufficient, still the libellant should be confined in his proof to the issues tendered thereby, and should not be permitted to take new and independent grounds. The decree must be *secundum allegata et probata* and cannot properly be based upon evidence alone. (Lawrence *v.* Minturn, 17 How., 100, 110, 111; McKinlay *v.* Morrish, 21 How., 343; and cases cited in the opinion of Judge Betts.)

II.

As to the Merits.—The Wells was in fault. The collision was caused by the culpable acts of those in charge of and navigating her.

1. There is no dispute that the Caroline was at the time close hauled on the starboard tack, and that the Wells was close hauled on her larboard tack; nor but that by the general rules of navigation the Caroline was entitled to hold on her course, and the Wells was bound to give way.

His Honor, the learned Circuit Judge, after stating this general rule of navigation, refers to another, which has been sometimes stated, namely, that if the vessel on the larboard tack be so far to the windward that if both persist in their course the other will strike her on the lee side abaft the beam or near the stern, then the vessel on the starboard tack must give way (which he justly condemns as being too precise and exact for practical use), and says that the better opinion still is that the vessel on the larbard tack must give way.

This is undoubtedly the rule. It has been long and well established, and must be perfectly familiar to all seafaring men. Therefore, to allow a vessel on her larboard tack to hesitate in complying with such rule, and to speculate upon the chances of being so far ahead, when passing the point of intersection of the sailing lines, as that she will receive the blow abaft her beam, would be extremely dangerous, and tend to increase the frequency of collisions.

Although it is true that a vessel on the larboard tack may be so far to the windward of the other as entitles her to keep her course, still, unless she is so palpably to windward, as that she may proceed, without any danger of collision, she should yield to the general rule requiring her to give way. The burden of proving that the Wells was so far to the windward as to render such general rule inapplicable, rests upon the party who sets it up as an excuse. It is clear that by that rule the Wells is *prima facie* in fault, and should be held responsible, unless the excuse is established by clear and indisputable evidence, which the claimant insists has not been made out.

2. In the first place, the rule of navigation, requiring the Wells to give way, became operative upon her when the Caroline came about upon her starboard tack, and was approaching.

The vessels were then approaching on converging lines, intersecting at a point ahead of each, and it was the duty of the Wells then, or within a proper time thereafter, to bear away. She had no right to delay, while she speculated upon the chances whether or not she would reach and pass the point of intersection before the other vessel, or would be so far ahead and to windward as to receive the

blow abaft her beam. This was too nice a calculation to be entered into under those circumstances. She should have promptly complied with the general rule and gave way. (St. John *v.* Paine, 10 How., R. 557; The Traveller, 2 Wm. Rob., R. 197; The Woodpark, 7, notes of cases, 397; opinions hereto annexed.)

3. The duty which thus became obligatory on the Wells was not momentary, but continued from the time it arose, as the vessels approached each other, so long as the means and opportunity of avoiding the danger remained. (Rumball *v.* The Pacific, 21 How, R., 372, 384.)

The Wells must have continued on her course, therefore, with this duty upon her, a considerable time before reaching a point where she might claim or pretend that it was too late to bear away. This was a flagrant violation of the general rule, which required her to give way at once without waiting to speculate on her chances of being to windward. It is no excuse that the Caroline was not seen, for she was in full view, and might have been seen by any competent lookout, faithfully attending to his duty. That she was not seen is evidence of still greater negligence on the part of the Wells, in sailing (as the District Judge decided), in the midst of a fleet of vessels, all tacking and working their way up, without a competent and attentive lookout.

4. But the Caroline was in fact seen in time to have complied with the rules.

The master of the Wells (who was at the wheel) says he saw her after she came around on her starboard tack, when a little less than a quarter of a mile off. (Rec. p. 14, fol. 29.) This was far enough to have enabled the Wells then, and even afterwards, to bear away without the least difficulty. The Wells was not then to the windward, for if she had been, she would have passed the point of intersection before the Caroline came up to it—both vessels at this time were making about the same speed. No witness pretends, that she was, or that she was at any time so far to the windward as to justify her in persisting in holding her course. Moreover, it is clear, from the testimony, that she was not

For it appears that while the Caroline was on her larboard tack, she was running in the same general direction with the Wells, and about 300 yards to leeward, and therefore when she tacked and came on her starboard tack she had to run at least this distance before reaching the point of intersection, and this too on a line only two points north of a right angle with the course of the Wells.

It follows, therefore, that if the Wells had been to the northward and windward of the Caroline when the latter tacked or was first seen, she would have been far away from the point of intersection before the Caroline would have reached it; but on the contrary she had only got at most so far to the windward as to receive the blow abaft her midship.

Looking at the case in this aspect, and it is clear that when the witnesses on the part of the Wells say, (and which his Honor the Circuit Judge adopted,) that she was to the northward and windward of the Caroline, they spoke in reference to the relative position of the two vessels at the moment of collision, and not as they had been from the time the Caroline came around on her starboard tack or from the time when she was seen by those on the Wells. This is the error into which the Court fell, for if the duty to bear away arose prior, then it was positively wrong to wait until too late and then pretend that the rule in question had become or was inoperative.

5. If, however, it should be said that the rule has reference to the relative position of the vessels just before or at the moment of collision, then the answer is, that that is contrary to the general rule above stated, which forbids holding on and speculating upon the subject. Besides the evidence does not clearly and sufficiently show that she was even then to the windward of the Caroline, or at all events far enough to render the general rule in question inoperative and so justify her in persisting.

The witnesses on the part of the Caroline say that her flying jibboom first took the forerigging of the Wells, (Rec. p. 17,) and if this be true the Caroline was even then to the northward and windward. It is true the witnesses on the Wells contradict this, and say that the blow was baft her

midships. This might be so, and still the Caroline have been to windward; for by simply putting her helm down, as she did, the course of the Wells might have been so changed as to receive the blow in that place. The testimony of the outside witnesses on the part of the Wells, (even including the one whose deposition was taken in the Circuit), is not controlling upon this point; because, they were on vessels which were moving, and were so much astern as not to be able to judge accurately. If the testimony, therefore, does not clearly establish the fact, it should not be regarded as sufficient to overcome the *prima facie* liability before mentioned.

6. But the Wells might have avoided the collision, even at this late moment, by going about on her opposite tack. The master admits he could have tacked at that time, and so avoided the collision; but he attempts to excuse this neglect by saying that she was too near the shoals to do so. In this he was entirely mistaken. There was plenty of room, and if there had been any competent person on the lookout, he would have known it. The place of collision was a quarter of a mile or more from the shoals. This is clearly proved, and the room was abundant; other vessels had tacked there. (Rec , p. 20.)

7. The Wells was also in fault in not having a competent lookout attending to that duty. The District Judge decided that there was no such lookout, and in this he is not overruled. What the result might have been if there had been a proper lookout, cannot be positively stated. But the inference is strong, that if there had been, the Wells would have seen the danger and complied with the rule by giving way.

III.

If the Wells had a right so to hold on, then it is insisted that the Caroline was not in fault in putting her helm to port, as she did, at the moment of collision.

1. Prior to this act no fault whatever had been committed by her. None has been proved. She had tacked from necessity, occasioned by another vessel ahead going about. This is clearly proved; besides she had no object in tacking before beating out that her most favorable tack, and she would not have done so except for such necessity. She had now come around and was standing upon her starboard tack, and she had the right to presume, down to the moment her helm was put to port, that the Wells would still give way. (The Catharine, 17 How. R., 170; 18 Law Reporter, 528.)

2. It was not until after all reasonable hope had passed that her helm was put to port, which is the act complained of. This movement was, under the circumstances, proper. It was, moreover, precisely what the master of the *Wells* at the same moment requested to have done, and was intended to throw the vessel about on the opposite tack. The master of the Wells says as soon as he hailed and requested her to go about he put his helm down and then ran forward to save his life. (Rec. 13, 14.) So that this movement of the Caroline's wheel must have been at the moment of collision. If it was wrong it is excusable, because it was in compliance with the request of the master of the Wells, and, therefore, cannot be regarded as a fault for which the Caroline should be held liable, and also because it was made under impending danger, brought upon her by the negligent and improper conduct on the part of the Wells and without any previous fault on the part of the Caroline, so that she should not be held responsible for the act, even if it be considered a fault. (The Pacific, 21 How. R., 372.)

It is, therefore, submitted that the decree of the Circuit condemning the Caroline is erroneous and should be reversed. But—

IV.

As to the damages. If this Court shall conclude that the Caroline was in fault and liable for the damages claimed, then it is submitted, (1.) That they should not under any circumstances exceed the value of the Caroline and her freight pending at the time; (9 Stat. at Large, p. 635.) and (2.) That the decree, as against the stipulators, cannot properly exceed the amount of the stipulations for cost and value.

The stipulations stand in the place of the vessel, and a "summary judgment" against the stipulators can only be entered by virtue of the authority therein contained. In this case the stipulations for cost and value amount in the aggregate to $5,250, for which amount summary judgment was authorized to be entered, but the decree of the Circuit directs such judgment to be entered against them (the stipulators being the same in both) for $7,202 51; which is an excess of $1,952 51 over the stipulations. This was erroneous. (Rule 59, U. S. District Court, in Benedict's Adm., Pr., 368. The Betsey, 5, C. Robinson Rep., 295. Lane *vs.* Townsend, Ware, Rep., 286.)

V.

In conclusion, therefore, the claimants respectfully insist that the decree of the Circuit is erroneous on the merits and should be reversed, and the decree of the District Court dismissing the libel, with costs, affirmed.

If, however, this Court conclude that the Caroline was in fault, then the decree should be corrected and the amount awarded against the stipulators reduced to the sum of $5,250, as authorized by the stipulations.

E. H. Owen,
Counsel for Cl'ts and Appellts.

WILLIAM H. WELLS, Owner of schooner JOHN C. WELLS, *vs.* The schooner ANN CAROLINE.	Appeal in Admiralty, September 26th, 1859.

Collision, larboard and starboard tacks—rights of vessels in their relative positions.

NELSON, C. J.:—The libel in this case was filed by the owner of the schooner John C. Wells *vs.* the schooner Ann Caroline to recover damages for a collision occurring in the month of February, 1854, on the eastern shore of Delaware Bay. The two vessels were beating up the bay in company with several other vessels in a channel about a mile wide between Crow shoals and the Jersey shore. The wind was from the N. N. W. about five or six knot breeze, the tide flood, setting up the bay. The John C. Wells was on her larboard tack close hauled, which was her long tack from Crow Shoals to the Jersey shore, the Ann Caroline on her starboard tack close hauled on the opposite course from the Jersey shore to Crow Shoals. The Wells was very heavily laden, the Ann Caroline in ballast. The two vessels had tacked at the Crow Shoals upon their long tack nearly at the same time, the Ann Caroline at the time being at the leeward of the Wells, and somewhat astern of her. The Ann Caroline ran out but one half or two thirds of her course when she suddenly came round on her starboard tack in consequence of a vessel ahead unexpectedly tacking and obstructing her course. While on this course, she came in collision with the Wells striking her on her starboard side aft about ten or fifteen feet from her taffrail, opening her side, and from which injury she sunk to the bottom of the channel in a few minutes.

The main ground upon which the defence of the Ann

Caroline is placed is. that she was on the starboard, or privileged tack, and that it was the duty of the Wells to give way and pass to her right. This rule of navigation is admitted by the counsel for the Wells; but it is insisted, that it has no application to the relative position of the two vessel, as made out upon the proofs in the case. It is claimed on his part, that the Wells was to the windward of the Caroline and ahead or above her in the channel, and that if this rule had been observed, and the Wells had ported her helm a collision would have been inevitable, that the change of course would have brought her head against the starboard side of the Caroline; and, that her proper manoeuvre in the emergency was to starboard her helm, which she did, and which would have avoided the other vessel, if she had not ported her helm at or about the same time, which caused her to strike the Wells on her starboard side but a few feet from her stern.

The controlling question in the case, therefore, is, whether or not the Wells was to the windward, and so far above the course of the Caroline before the two vessels came together as to forbid the application of this settled rule of navigation, that when two vessels are approaching each other on opposite tacks, both being close hauled, the one on the larboard tack shall give way and pass to the right.

On looking into the proofs in the case, which are very voluminous, it will be found, that the testimony of the master and hands on board of the respective vessels, as usual, is contradictory, those on the Wells claiming that the course of the Caroline was to the leeward, and southerly of that of their vessel, while those on the Caroline insist that her course was to the windward of the Wells.

If the case stood upon the testimony of these witnesses, we should regard it as so far conflicting and doubtful as to lead us not to interfere with the decree of the Court below dismissing the libel. But, there are four witnesses, masters and hands upon other vessels, engaged at the same time in beating up this channel, and who were on the same tack with the Wells, but to the leeward and a little to her stern, who witnessed the collision, and the course of the vessels previous to the accident, and they all concur in confirming

the testimony of the master and hands of the Wells, as to the course and relative position of the two vessels.

The testimony of one of these witnesses has been taken in this Court, and was not before the Court below, which is very explicit and direct upon this question.

I do not put the case upon a rule stated in some of the books, and which was referred to in the case of the St. John (10 How 581) which states, that if the vessel on the larboard tack is so far to the windward, that if both persist in their course, the other will strike her on the lee-side, abaft the beam, or near the stern in such case the vessel on the starboard tack must give way. The objection to this rule is that it is too precise and exact for practical use. The better opinion is, that the vessel on the larboard tack must give way, even though she be a point or a point and a half to the windward.

But while no encouragement should be held out to any very nice calculation of the vessel bound by the general rule to give way, as to the precise courses of the two vessels, it is clear that she may be so far to the windward of the other as to entitle her to keep her course, and making it a fault of the one on the starboard tack to change her course and attempt to pass to the right. In the case before us the witnesses on the vessels accompanying the two in question say, that if the Caroline had kept her course, instead of porting her helm, she would have passed under the stern of the Wells, and the place where she struck her confirms this view.

There were several considerations urged on the argument by the counsel on both sides in support of their respective views of the case, which, as they rest principally upon a controverted state of facts, we do not deem it important to notice. We think the ground upon which we have placed the decision of the cause is clear, and rests upon evidence that can hardly be said to be in controversy.

We must, therefore, reverse the decree of the Court below, and direct a reference to a commissioner to take proofs and report upon the damage in the case.

U. S. DISTRICT COURT,

Southern District of New York.

William H. Wells, *vs.* The Schooner Ann Caroline, her Tackle, &c.	Jany. Term, 1856. Opinion of his Honor Judge Betts.

By the Court:—A fleet of more than twenty sailing vessels got under way, at about midday, the 11th of February, 1854, from their anchorages near Cape May. The craft were all schooners. The wind was fresh from N. W. or N. N. W., and the tide making up, but not at full flood. Between two and three o'clock P. M., the John C. Wells, owned by the libellant, running close-hauled on the larboard tack, and heading N. N. E., and the Ann Caroline, owned by the claimant, running close-hauled on the starboard tack, and heading W. by N., came in collision in the channel, between Crow shoal and the Jersey shore, nearest to the shoal, but far enough off to leave the John C. Wells sailing room sufficient to come safely about, if she desired to do so.

The John C. Wells was heavily laden, nearly down to the water's edge. The Ann Caroline was the larger vessel and in ballast, and was making the greatest speed when fully under way. The Cape May channel into Delaware Bay, where the mass of vessels were at the time beating their course, is a narrow inlet, having a channel of less than a mile in width, and the vessels were changing from one tack to the other in plain view, and near proximity to each other. The day was clear, and nothing obstructed observation across and up and down the channel, except the transit of the various vessels in progress from point to point. These circumstances summoned all parties to the exercise of active watchfulness and promptitude, and relieves the Court from the perplexity attendant upon ascertaining facts surround-

ing a collision which occurs in the night, or in thick or obscure weather.

When collisions at sea take place open to the view of all parties, and become afterwards subjects of litigation, Courts look carefully at the first version given of the transaction by the parties concerned, and distrust all additions to or abstractions from the original representation, particularly when made under oath. The English Admiralty are, perhaps, more tenacious on this point than the American, and will rarely hear evidence of either party tending to give the case a character differing from that presented by his pleadings.

I have on other occasions animadverted upon this topic, and conceding the solidity and usefulness of the general principles, have been disposed to look with leniency upon errors in pleadings and accept evidence not absolutely inconsistent with them which parties are enabled to produce, and thereby give a juster understanding of the cause than was possessed by them when the pleadings were prepared without requiring their record to be reformed. The reasons for permitting that practice, drawn from the circumstances, the character of the parties and the principles governing this class of actions, have been before assigned. It is sufficient now to say that the Court has cautiously restrained each party from thus setting up a case by proofs contradictory to that made by his pleadings.

In this instance, the allegations of the libel are: That on the afternoon of Saturday, February 11th, 1854, the Schooner John C. Wells was run into and sunk by the Schooner Ann Caroline, and that the libellant is entitled to damages therefor to the amount of $5000.

The libellant alleges on his information and belief, that the facts of the collision are that the John C. Wells was on a voyage from New York to Philadelphia, deeply laden with a valuable cargo, and on the afternoon of February 11th, she had arrived in Delaware Bay, and was running about N.E. up the Eastern shore of the Bay, close hauled and going about three knots an hour: that the Schooner Ann Caroline, which was a much larger vessel and was light, was also bound up the Bay, and was at this time running in the same general direction, but further in shore: that the said Ann Caroline, before she had beat out her

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tack, suddenly and unexpectedly went about, and, running about six knots an hour directly towards the John C. Wells carelessly and negligently and wrongfully ran into the said John C. Wells, striking her on her starboard quarter so soon, and with such force that she sunk in so short a period that her crew were barely able to escape with their lives.

It further charges, that the collision was caused by the negligence of those in charge of the Ann Caroline—in coming about when they did—in running directly towards the said John C. Wells—in not changing their course so as to avoid her—in having no proper look out—and in not hailing the said John C. Wells or otherwise giving timely notice of the course, intended to be pursued by said Ann Caroline.

The Libel omits all assertion of various particulars which on the hearing were made cardinal, if not vital points in the cause, and were attempted to be established by the libellant by proof. The course and strength of the wind; the tacks upon which the two vessels were running: how far from either or both shores the collision took place; or how far from the Eastern shore the Ann Caroline came about, and the impediments on the Western shore to the John C. Wells going nearer to it, than the position she was in when the collision took place.

It is manifest that the Libel furnishes a meagre statement of facts to justify the Court in adjudging that the Ann Caroline was culpable in any thing done by her: the opinions and conclusions of the libellant are asserted emphatically enough, that her conduct was careless, negligent and wrongful, and that the collision was occasioned by her sole fault, but he does not state the manner his vessel was being navigated, or what acts were done on board her to prevent or escape the collision, not even that a hail was given from her to the Ann Caroline as a warning to the latter vessel.

This mode of pleading fails to fulfil the requirement of Rule 23 of the Supreme Court in not "propounding the "various allegation of facts upon which the Libellant relies "in support of his suit, so that the defendant may be "enabled to answer distinctly and separately the several "matters contained in each article."

The difficulty under this form of pleading does not rest solely with the respondent in framing a proper reply, but the Court cannot judicially find in the allegations a substratum for a decree in favor of the libellant:

No facts are averred which exonerate him from fault, and none which fix culpability on the respondents necessarily conducing to the disaster, because it does not import a fault producing the collision that the Ann Caroline came about unexpectedly without running out her tack; or that she had no proper look out, or ran directly towards the John C. Wells, or did not hail the latter vessel or otherwise give notice of the course she intended to pursue.

The English Admiralty demands the whole case to be stated in the libel, and will reject proofs at variance with, or extraneous to, the statements in the pleadings. (2 Wm. Rob, 104, ibid 108, Ann and Jane; the Virgil, ibid 202, ibid, the Ebenezer, 206; ibid, The Speed, 227, 228.)

Without making the imperfection of the libel a stringent ground of objection to the action, and recurring to the whole case made by the libellant's proof, it is necessary, before looking into the defence, to determine whether he has made out by his proofs a valid claim for damages against the Ann Caroline. Without he succeeds in this the Court cannot be called upon to criticise the sufficiency of the answer or the proofs produced in its support. (The sch. Hoppet, 7 Cranch, 389; the sch. Boston, 1 Sumn, 328; *Jenks* v. *Lewis*, Ware, 51; the Wm. Harris, ibid, 367.)

The master, first mate, and a seaman, are all the witnesses who were aboard the John C. Wells who testify to her position, or the acts of the John C. Wells to prevent the collision complained of, or to any particulars which impeded or embarassed the manœuvres incumbent upon her to make on the occasion.

The first mate says he was on the lookout about the middle of his vessel, and he thinks a little forward of her main mast, on the starboard side, and had a clear view of everything ahead. The John C. Wells came about on her long stretch and larboard tack, and proceeded about one-eighth of a mile at the rate of four knots per hour, when the Ann Caroline came into her.

The latter went about on that tack nearly at the same time with the Wells and a little to leeward of the latter. He did not see her again until she was within forty or fifty yards of him, coming fast on a four or five knot breeze, and directly upon him, both vessels being then close hauled. There was then time for her to have got out of the way by running up into the wind, but was not time for the John C. Wells to do anything in avoidance of her. There were a number of other schooners astern and to leeward of him, but he saw nothing to windward within two miles.

The master of the Wells hailed the Ann Caroline, and then shoved his wheel down just as the vessels struck.

Mr. Baker, the master, says he was at the wheel of the Wells. When she tacked to the eastward the Ann Caroline came around on the same tack about abreast of him. the Wells then moving scarcely a mile an hour, just sagging off the shoal, and had not got her headway. The Ann Caroline was light, and running four or five knots towards him. Both vessels close hauled.

He did not see the Ann Caroline when she tacked with him off the shoal, nor at the time of her tacking east of him, but saw her just after she came about and was making towards him. He saw her under the boom of the Wells. She was then short of a quarter of a mile from him; he hailed her to keep out of the way. There was not room on account of the shoal for his vessel to come about, and he could not any way avoid the Ann Caroline. She came right upon him without altering her course. He put his own wheel down, and ran forward as she struck. Does not know that his vessel was brought by it into the wind at all.

Bloomer, a man on the deck of the Wells, says he saw the Ann Caroline on the same course eastward with the Wells after the latter tacked (no other vessels then ahead nearer than one or one and a half miles off) and a little astern; she was half a mile to leeward. He then went below. Hearing some one speaking loud on deck, he came out, and when he came up saw the Ann Caroline, he thinks, 100 to 150 yards off, and if she had then put her wheel up she would have gone under the stern of the Wells, but the latter could not go about on account of the shoal, nor

under the stern of the Ann Caroline by putting her wheel up. There was no other vessel within two or three hundred yards of the two.

Examining the case made by the libellant upon the law and the facts given in evidence by him, it is manifest that he was in fault in two essential particulars, either of which might have caused the collision without supposing any blame on the part of the Ann Caroline.

First. He was navigating in the midst of a squadron of other vessels, several of them according to his own testimony, at short distances from him, and the accused vessel particularly coming up from astern very fast upon him and making her tacks but a little to leeward, yet he had no proper watch stationed, or else kept his lookout so negligently that he did not discover when she made her last larboard tack eastward, nor when she came about on the starboard tack on which the collision took place.

The call for vigilance in this respect was especially emphatic, because of the numerous craft working their way nearly together against a breeze of 4 or 5 knots on a flood tide, and in a comparatively narrow channel, not exceeding one mile in width, all which necessarily exacted from the varying speed of the vessels, and the necessities of such navigation, for frequent and abrupt changes of course.

The rule of navigation settled by the Trinity Masters, sanctioned by the English Admiralty Courts, and by reiterated adjudications in the American tribunals is, that when two sailing vessels on opposite tacks are crossing each other, and there is a probability, if their course is continued, they must come in contact, the one on the starboard tack keeps close to the wind, and the one on the larboard tack must bear away or be answerable for the consequences. (Abbott, 309, 236, 10, How, 581, *St. John v. Paine.*) This rule does not depend, as is sometimes supposed, upon the fact that the vessels are approaching stem on (The George, 5 notes of cases, 368; 6 ib., 53.), nor if the Ann Caroline was so far to windward that the master of the Wells might suppose she would go clear of him does that discharge the Wells of blame. (*Ib.* The Woodpark, 7 notes of cases, 397.)

Whether the larboard tack should bear up or keep away will depend upon the relative positions and proximity of

the approaching vessels. If the misfortune arises from the misconduct of the suffering party only, he must bear his own loss, (Story on Bailments, § 608., 3 Kent, 231; the *Woodrop Sims*, 2 Dods, 83.), and it will be presumed her fault until she clearly proves the contrary. (The Test., 5 notes of cases, 276.)

I find nothing in the evidence to relieve the Wells from the operation of this doctrine. Giving her the advantage of proving the fact not alleged in the libel, that the Caroline was not seen upon the starboard tack until she had approached so near that no reasonable effort by the Wells could avoid her, she has failed in establishing that fact. The master of the Wells saw the Ann Caroline short of a quarter of a mile off, and his mate, forty or fifty yards, and both swear the distance was sufficient for her to have gone up into the wind and thus have avoided the Wells. The master thinks the Wells could not have escaped the collision by the same maneuver, nor bear away under the stern of the Ann Caroline, because she was just coming round and had scarcely got head way. His mate however, and he was attending to her sails and movements, says she was running 4 or 5 knots and had proceeded one-eighth of a mile on this tack when met by the Ann Caroline. All, either of these officers did in the emergency was to hail the Ann Caroline to get out of their way.

The master of the *Ann Caroline* had a right to rely upon the opposite vessel doing her duty, and could not properly deviate from her own course until it became palpable that the *Wells* did not discover her or did not intend to change her direction (17 How. 170. The schooner *Catherine.* 18 Law Reporter, 528.)

I cannot regard the apology attempted to be made, had it been satisfactorily proved, that the Ann Caroline was not discovered from the Wells, until too late for her to take measures to escape the collision, as any lawful excuse for inaction. The utmost indulgence ever allowed for such excuse is, when there is some natural impediment, obscurity of atmosphere &c. and which intercepts the sight. (17 How. 178 *Peck* v. *Sanderson.*) Otherwise the law imposes upon parties the consequences resulting from their failing to guard against dangers which with the excercise of reasonable di-

ligence they may discover and avoid. (1 W. Rob. 469, *The Friends*, 6 Legal Ob. 190. The *Test* 5 Notes of cases, 276, 3 Kent, 294.)

There would be no safety to persons or property transported by water if this rule was not peremptory and inflexible.

I do not think the libellant, with every effort to prove the best case for himself he could make out without being tied by his pleading to any specific state of facts, has succeded in discharging his vessel from culpable conduct in the transaction or fastening it upon the Ann Caroline, and according by the familiar law of collision his suit cannot prevail.

In this view of the case it is useless to discuss the evidence offered on the part of Ann Caroline to prove she had been properly conducted. She was on the privileged tack and did not attempt to depart from it, until it became manifest that a collision was imminent. The law did not require her to do so before, and the Court will not inquire whether when she made the effort to avoid the Wells the best manoeuvre to accomplish that end was adopted. The libellant cannot recover upon his own case.

Libel dismissed.